

LEGAL UPDATES

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Employers Continue to Face ERISA Tobacco Surcharge Lawsuits, With Mixed Results

Recently, companies have seen a spate of class action lawsuits challenging the legality of tobacco cessation wellness programs and related tobacco surcharges imposed by their employer-sponsored health benefit plans. Plaintiffs allege that plans have misapplied tobacco surcharges in violation of the Employee Retirement Income Security Act (ERISA), the Health Insurance Portability and Accountability Act (HIPAA), and other federal laws. This article examines these claims and provides guidance for employers to ensure that their plans are compliant with federal law and to reduce the risks of these class action lawsuits.

Background on ERISA regulation of wellness programs and premium surcharges

Employer-sponsored health and welfare benefit plans are generally governed by ERISA, along with related federal laws and regulations. These laws prohibit health plans from discriminating against individual participants in the form of higher premiums or contributions based on specific health status-related factors, such as medical conditions and claims history. However, there is an important exception that allows plans to offer discounts (or impose surcharges) if they are tied to participation in a wellness program designed to promote health or prevent disease.

Tobacco cessation programs are one example of a wellness program. And notably, discounts (or surcharges) for tobacco cessation programs are generally higher than for other wellness programs.

In recent class action lawsuits, plaintiffs allege that tobacco surcharges violate ERISA and HIPAA because they do not comply with the requirements for

wellness programs. To comply with ERISA and HIPAA, wellness programs must meet several requirements, which include:

Reasonable alternative standard (RAS): The wellness program must offer a reasonable alternative standard for individuals who cannot meet the initial standard or accommodate the recommendations of an individual's personal physician. For example, if the standard is to achieve tobacco cessation, reasonable alternatives may include participating in a tobacco cessation program.

Uniform availability: The full reward must be made available to all similarly situated individuals.

Frequency: Employees must have at least one opportunity per year to qualify for the reward.

Adequate notice: The plan must clearly disclose all materials describing the terms of the program, notify participants of the reasonable alternative standard, provide contact information for obtaining it, and state that any recommendation of an individual's personal physician will be accommodated.

Recent tobacco surcharge litigation and alleged failure to meet regulatory requirements

Recent litigation attacks employers' compliance with these requirements. The most common claims include:

Plaintiffs allege that tobacco cessation programs fail to provide a reasonable alternative standard to avoid the tobacco surcharge or that the reasonable alternative standards are too hard to achieve. For instance, some plans require employees to quit using tobacco entirely rather than simply participate in a cessation program.

Plaintiffs claim that when employees complete the standard or reasonable alternative standard partway through the year, they are not being retroactively reimbursed for surcharges already paid. Plaintiffs also assert that to pay the "full reward" as required, plans must pay employees refunds for any surcharges paid earlier in the year before they met the alternative standard.

Plaintiffs attack the employers' failure to satisfy their required notice obligations. Plaintiffs allege that plan documents do not adequately explain how participants can obtain these refunds. They argue that employers do not clearly notify employees about the availability of reasonable alternatives, how to request them, or that a doctor's recommendation will be honored. Key documents—such as summary

plan descriptions and open enrollment guides—often fail to explain how to avoid or remove tobacco surcharges and obtain retroactive refunds.

Several courts have recently allowed these class action lawsuits to proceed past the motion to dismiss stage, meaning that plan sponsors face significant litigation risk and expense. Several class action lawsuits have already settled, resulting in employers paying millions of dollars in retroactive surcharges, amending their wellness programs, and improving communications regarding these plans with their employees. Additionally, plans that do not comply with these legal requirements risk enforcement actions by the Department of Labor.

That said, one recent court has pushed back on plaintiffs' allegations regarding a tobacco surcharge by limiting the scope of that lawsuit. On July 29, 2025, in *Chirinian v. The Travelers Companies Inc.*, the U.S. District Court for the District of Minnesota dismissed in part and allowed in part plaintiff's claim alleging that Travelers had failed to comply with ERISA's requirements. The court dismissed plaintiff's claims that Travelers violated ERISA by requiring individuals to enroll in a tobacco cessation program by March 31 of the plan year and complete the program by December 15 of the same year, holding that these deadlines comply with ERISA's requirement that the program give individuals the opportunity to qualify for the reward at least once per year. However, the court denied Travelers' motion to dismiss that part of the claim alleging that the plan failed to comply with ERISA's disclosure requirements because the plan's Summary Plan Description did not inform participants of the "option to involve their personal physician."

Time will tell what impact this decision will have on the future landscape of lawsuits asserting similar allegations.

Key takeaways

Given the current legal landscape, tobacco cessation wellness programs carry both regulatory and fiduciary compliance obstacles. To avoid the risk of lawsuits and penalties, employers should adopt the following best practices to ensure their wellness programs are fair, effective, and legally compliant:

Review and update wellness program design: It is important to regularly review and update the plan's wellness program to ensure it is designed to promote health or prevent disease and that tobacco surcharges or other such premiums or contributions are only part of a compliant, outcome-based wellness program.

Engage and undergo annual fiduciary best practices compliance training: Having annual fiduciary counseling provides you with real-time best practices and is crucial to demonstrating prudence and actively ongoing monitoring of those fiduciary duties.

Offer a reasonable alternative standard: Always provide employees with a reasonable alternative to avoid the surcharge, such as participating in a smoking cessation program—not just quitting entirely. Ensure the alternative is achievable and not unduly difficult. The reasonable alternative standard should also include accommodating the recommendations of an individual's personal physician, if the physician deems a plan standard is not medically appropriate for that individual.

Provide retroactive reimbursement: If an employee completes the alternative standard during the year, refund any surcharges already paid that year, and clearly explain in plan materials how employees and their spouses can get this refund.

Encourage robust notice and disclosure: In the plan documents, as well as in every document that describes wellness program or tobacco surcharges, clearly describe the program and state that a reasonable alternative is available, provide contact information, and note that a doctor's recommendation will be considered and is an adequate option.

Maintain consistent and prudent administration: Apply the rules uniformly, keep thorough records, and regularly review plan materials and procedures to ensure compliance with current law.

It is important to remember that these guidelines apply not only to tobacco cessation programs but to any wellness programs directed at health promotion or disease prevention—for example, programs directed toward results of biometric screening such as high cholesterol, high blood pressure, body mass index, or high glucose levels.

These wellness programs can be valuable if they are designed and administered in strict compliance with federal law. By following these best practices, employers can reduce legal risk and ensure their wellness programs are both effective and legally compliant. We recommend that plan sponsors review their wellness programs and plan documents to ensure they are fully compliant with ERISA and other federal laws.

Contact us

If you have any questions or if you are seeking wellness program or other fiduciary compliance counseling, please contact a member of our benefits team or your Husch Blackwell attorney. As ERISA's fiduciary duties and litigation continue to evolve rapidly, the Husch Blackwell Employee Benefits & Executive Compensation team and ERISA & Employee Benefits Litigation team actively monitor such developments and are here to help with any of your benefit needs.