



Insurance Brokers &
Consultants

State Laws Impacting Employee Benefits

Compliance Series
May 19, 2022

[EPICBROKERS.COM](https://www.epicbrokers.com)

Presenters



Bob Radecki, Senior Regulatory and Public Policy Analyst

Bob Radecki has over 30 years of experience in the HR and employee benefits industry helping employers deal with difficult benefit and compliance matters. Previously Mr. Radecki founded, and served as President of A.E. Roberts Company, a nationally recognized compliance consulting and training firm. Bob is recognized as a leading expert on a variety of benefit compliance issues including COBRA, FMLA, ERISA and Health Reform. Bob has been the featured speaker at many industry events and conferences and has published several articles concerning employee benefits compliance issues.



Liz Mann, J.D.

Liz Mann is EPIC's internal compliance director. Liz and her team are responsible for disseminating information to clients about changing requirements and regulations and reviewing all plan designs and programs for compliance with Federal and State regulations. Liz is embedded into our account management team to provide timely support and guidance as ERISA-related regulations or concerns emerge in the marketplace. As a client, you have the option of directly accessing Liz or accessing her traditionally through your account team. Liz graduated Magna Cum Laude from Saint Mary's College in Notre Dame, IN with Bachelor of Arts degrees in History and French. She graduated with her law degree from University of Toledo, College of Law in Toledo Ohio in 2007. She has accumulated over 12 years of experience working in employee benefits and offers expertise in ERISA, IRS, COBRA, FMLA and ACA compliance.



Delaney Callahan J.D. Senior Consultant

Prior to her current position Delaney worked in the third-party administrator field where she researched and assisted in maintaining compliance with Section 125 regulations and COBRA, ERISA, and ACA requirements for health and welfare benefit plans of a wide range of employers. As a Senior Compliance Consultant at Benefit Comply, she provides guidance on regulatory compliance for health and welfare benefit plans to insurance professionals and directly to employers. Ms. Callahan received her law degree from Michigan State University College of Law and her bachelor's degree from Calvin College.

Agenda

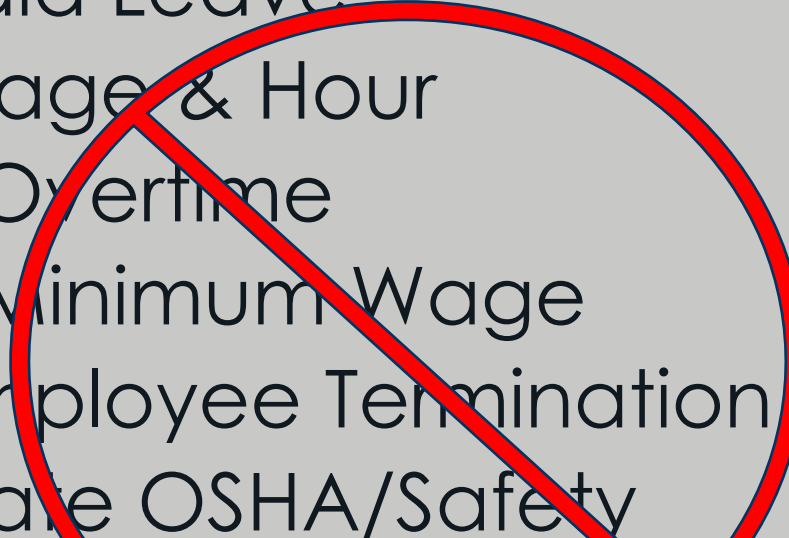
- Background
 - Employee Benefits vs. Employment Law/HR
 - Applicability – Insurance Company vs. Employer
 - Understanding ERISA Pre-Emption
- State Disability Insurance Mandates
- State Continuation Laws
- Individual Mandate Reporting
- State tax treatment of HSAs
- Essential Health Benefits

Employee Benefits vs. Employment Law/HR State Laws

Employee Benefits

- State Continuation
- Mandated Disability Coverage
- Essential Health Benefits
- State taxation of HSAs
- State Mandated Benefits
- Requirements to cover dependents to a certain age

Employment Law/HR

- Paid Leave
 - Wage & Hour
 - Overtime
 - Minimum Wage
 - Employee Termination
 - State OSHA/Safety
- 

Employer Laws

- State Continuation (maybe...!)
- Mandated Disability Coverage
- Essential Health Benefits
- State taxation of HSAs

Insurance Company Laws

- Mandated Benefits
 - Requirement to allow dependents coverage to certain age
-

Understanding ERISA

- Employers Subject to ERISA
 - ERISA applies to any employee welfare benefit plan if it is established or maintained **“by an employer engaged in commerce or in any industry or activity affecting commerce...”**
 - Not Subject to ERISA
 - Governmental Entities (Cities, Counties, Public Schools, etc.)
 - Church Plans & Indian Tribal Governments
- Plans Subject to ERISA
 - Any group plan maintained by an employer **“for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise ... medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services”**
 - Voluntary Plans are not Subject to ERISA if they meet the DOL safe harbor (No employer contributions, employee contribution cannot be made through Section 125 plan, little employer involvement in administration of plan, etc.)

ERISA Preemption

- ERISA Preemption
 - In General - ERISA preemption applies to state laws that “relate to” to an employer sponsored ERISA employee benefit plan...
- Early Supreme Court (SCOTUS) broad approach to ERISA preemption
 - ERISA preemption applied when a state law had “a connection with, or reference to, covered employee benefit plans”
- Interpretation began to change in the 1990s
 - New York State Conference of Blue Cross & Blue Shield v. Travelers Insurance Co. (1995)
 - New York law required hospitals to collect fees from commercially insured patients
 - Intended to cover the cost of treating uninsured patients
 - New York law was not preempted by the ERISA because it was a “general health care regulation”
 - State law preempted by ERISA when it “mandates employee benefit structures or their administration”

ERISA Preemption

- In 2016 SCOTUS surprised some with a broader application of ERISA preemption
 - Gobeille v. Liberty Mutual Insurance
 - A Vermont law requiring all health care plans—including employer-sponsored plans—to report claims data to their state's all payers claim database
 - The Court concluded that the law was preempted by ERISA because the statute was opposed to ERISA's aim of a "single uniform national scheme for the administration of ERISA plans without interference from laws of the several States even when those laws, to a large extent, impose parallel requirements"
- Recent SCOTUS Activity
 - Rutledge v. Pharmaceutical Care Management
 - SCOTUS ruled 8-0 that an Arkansas law regulating certain PBM practices was not preempted by ERISA because it regulated PBMs not the ERISA plans
 - "ERISA does not pre-empt state rate regulations that merely increase costs or alter incentives for ERISA plans without forcing plans to adopt any particular scheme of substantive coverage"

Practical Implications of ERISA Preemption

- Fully-Insured Plans vs. Self-Insured Plans
 - Self-Insured Plans - When the ERISA preemption applies an employer sponsored self-insured plan does not need to follow state law
 - State mandated benefits
- New Trend – State PBM Laws
 - Multiple states have passed PBM related laws and more can be expected since the Rutledge decision
 - Could have an impact on employer PBM contracts and how Rx benefits are handled
- State Domestic Partner Employment Discrimination Laws
 - While possibly preempted by ERISA carriers may impose requirements on fully-insured plans to follow state laws regarding coverage for domestic partners
 - Self-insured plans need to watch litigation developments – ERISA preemption may be tested...



STATE DISABILITY INSURANCE MANDATES

Disability Insurance Mandates

State/Territory	Covered Employers
California State Disability Insurance	Employers with employees working in CA
Rhode Island Temporary Disability Insurance	Employers with employees working in RI; out-of-state employers must register
New Jersey Temporary Disability Insurance	Employers subject to NJ's unemployment compensation
New York Disability Benefits Law	Employers with at least one employee working in New York on at least 30 days in any calendar year
Hawaii Temporary Disability Insurance	Employers with employees working in HI
Puerto Rico Puerto Rico Disability Benefits Act	Employers with at least one employee in PR

Disability Insurance Mandates

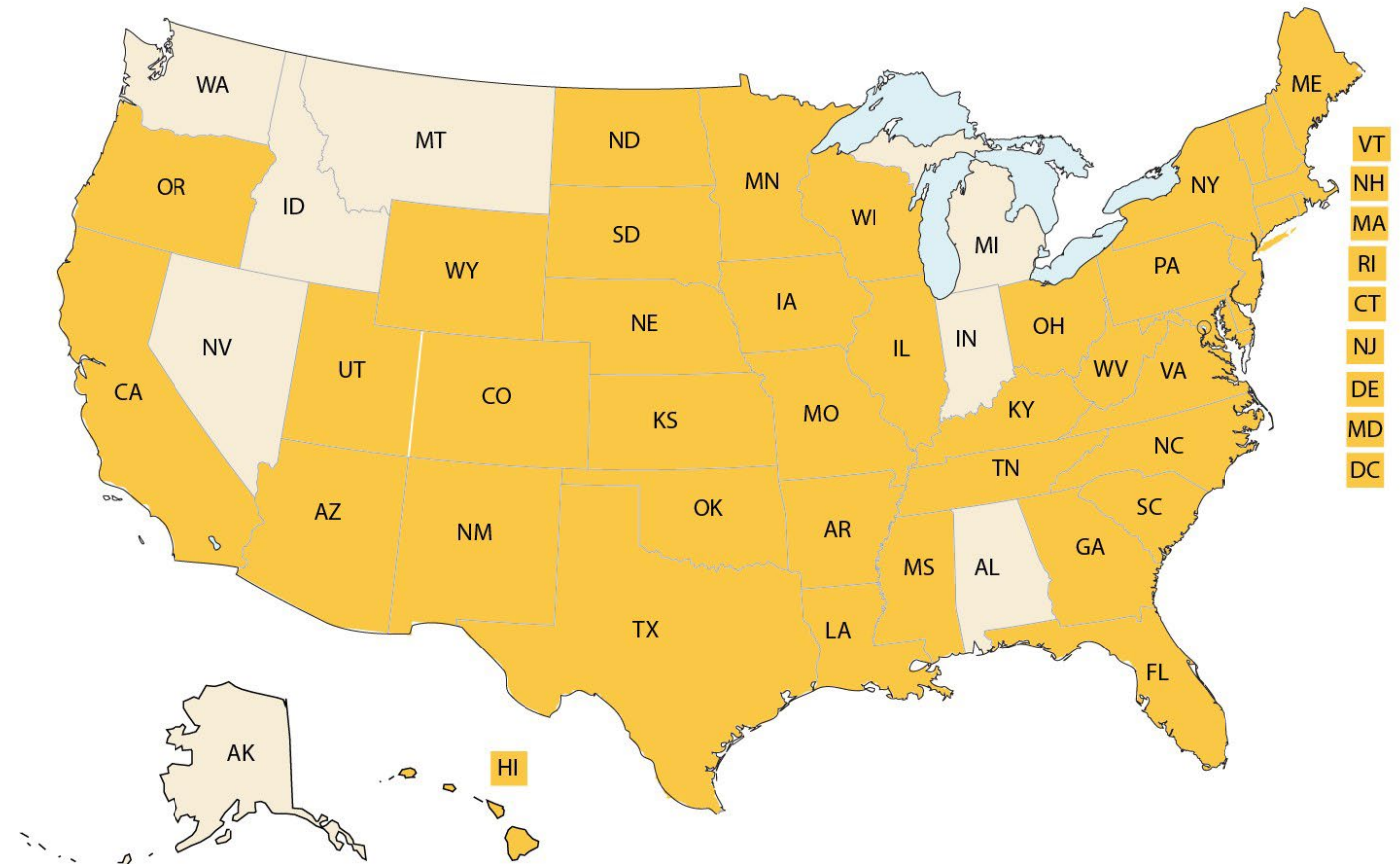
- How are the mandated disability benefits funded?
 - **CA** – a State Disability Insurance deduction is withheld from employees' paychecks; for 2022, the withholding rate is 1.10%
 - **RI** – employees are taxed at 1.3% of their pay
 - **NJ** – both employers and employees contribute based on covered wages earned by each employee
 - For 2022, employers contribute between \$39.80 and \$298.50 on an employee's first \$39,800 earned during the calendar year
 - For 2022, employees contribute 0.14% on the first \$151,900 earned during the calendar, but no more than \$212.66
 - **NY** – employers may take an employee contribution of 0.511% of their wages, but no more than \$0.60 for 2022
 - **HI** – employer may pay the cost, or share cost with employee but no more than 0.5% of the employee's weekly wage not to exceed \$6.00 for 2022
 - **PR** – employers may share the cost with employees; the cost is 0.6% of an employee's first \$9,000 in wage, but not more than 0.3% of that \$9,000 may be from an employee's wages



STATE CONTINUATION LAWS

- 41 states, including D.C., have enacted some form of continuation coverage legislation
- State continuation applies only to fully-insured plans – COBRA applies to fully and self-insured plans for employers with over 20 employees

Arizona	Maryland	Oregon
Arkansas	Massachusetts	Pennsylvania
California	Minnesota	Rhode Island
Colorado	Mississippi	South Carolina
Connecticut	Missouri	South Dakota
Delaware	Nebraska	Tennessee
Florida	New Hampshire	Texas
Georgia	New Jersey	Utah
Illinois	New Mexico	Vermont
Iowa	New York	Virginia
Kansas	North Carolina	West Virginia
Kentucky	North Dakota	Wisconsin
Louisiana	Ohio	Wyoming
Maine	Oklahoma	Wash. D.C.



State Continuation Types

- Some state continuation laws overlap or otherwise interact with federal COBRA requirements
 - Example:
 - California's Cal-COBRA applies to employers with 2-19 employees (i.e., those not subject to COBRA) and also applies in any instance where the qualified beneficiary is entitled to less than 36 months of continuation coverage under federal COBRA
- Other state continuation laws are designed to be mutually exclusive from federal COBRA
 - Example:
 - Maine's state continuation law specifically exempts any group plan that is subject to federal COBRA
 - Delaware's state continuation law applies to any employers that have fewer than 20 employees and are not subject to federal COBRA

State Continuation

- The design of state continuation requirements vary greatly between states – and can differ significantly from federal COBRA:
 - Most state continuation laws do not apply to dental or vision plans
 - To be eligible for state continuation, employees must have been covered for a certain period of time (e.g., 3 or 6 months) leading up to the qualifying event
 - For many states, mere Medicare eligibility (rather than entitlement) is a valid cause for continuation coverage to be terminated early
 - Maximum periods of coverage vary greatly – from 3 months to 3 years (even some indefinite in specific cases)

Which State Continuation Law Applies?

Applicable state continuation law is based on the state where the group contract is issued...

- It is not based on a where a participant lives
- It is not based on the physical location of the employer



INDIVIDUAL MANDATE REPORTING

The Individual Mandate History

- Included in the ACA to strengthen the individual market by giving people a reason to buy insurance even if they think they are healthy and don't need it.
- Famous 2012 Supreme Court Case - National Federation of Independent Business v. Sebelius (5 to 4 decision). Justice Roberts... "It's a tax..."
- Congress "zeros out" the individual mandate effective 1/1/2019

States Get into the Act!

- Some states begin to enact their own individual mandate "tax"

Individual Mandate Reporting

State	Due Date – Ind Statements	Due Date – State Submission
California	Jan 31	May 31 (for 2022 only – normally March 31)
Rhode Island	Jan 31	March 31 (for 2022 only – normally Jan 31)
New Jersey	March 2	March 31
Washington DC	March 2	30 days after federal deadline, including extensions (April 29, 2022)
Massachusetts	March 2	March 31

Individual Mandate Reporting

- States generally have a dedicated reporting website – often the same that's used for other tax reporting purposes
 - CA → Franchise Tax Board
 - NJ → Division of Revenue and Enterprise Services' (DORES) MFT SecureTransport (Axway) service
 - MA → Department of Revenue
 - RI → Division of Taxation
 - Washington DC → MyTax.DC.gov



STATE TAX TREATMENT OF HSAS

State Tax Treatment of HSAs

- HSA Tax Treatment Basics
 - Employee HSA contributions reduce the employee's taxable income (pre-tax)
 - Employer HSA contributions are tax free to the employee
 - Employers also do not owe payroll tax on HSA contributions to employees
 - Earnings on HSA accounts are not taxed
- However, there are a small number of states that apply different tax rules to HSA contributions and earnings for state tax purposes
 - States that tax HSA contributions
 - California
 - New Jersey
 - States that tax HSA earnings, but not HSA contributions
 - New Hampshire
 - Tennessee



ESSENTIAL HEALTH BENEFITS

Essential Health Benefits

- Essential Health Benefits (EHB) Background
 - Only fully-insured small group and individual health insurance plans are required to offer all essential health benefits
 - Details of required essential health benefits is defined by each state but must include:
 - Ambulatory patient services
 - Emergency services
 - Hospitalization
 - Maternity and newborn care
 - Mental health and substance use disorder services, including behavioral health treatment
 - Prescription drugs
 - Rehabilitative and habilitative services and devices
 - Laboratory services
 - Preventive and wellness services and chronic disease management
 - Pediatric services, including oral and vision care

Essential Health Benefits

- Essential Health Benefits and Large Employer Plans
 - Fully-insured Large Employer Plans
 - While not required to cover all essential health benefits fully-insured employers are stuck with whatever benefits the insurance company includes in the plans they offer...
 - Self-Insured Large Employer Plans
 - Not required to offer all essential health benefits...But...
 - No Annual or Lifetime dollar maximums allowed for any EHBs offered
 - Self-insured plans can designation whatever state benchmark EHB plan they want to determine exactly which benefits cannot have a lifetime of annual maximum
- CMS website with state EHB information
 - <https://www.cms.gov/CCIIO/Resources/Data-Resources/ehb>



Questions?
