



### *IN THIS YEAR-END EDITION:*

#### ❖ STATUS UPDATES:

- ♦ Wellness Programs
- ♦ HIPAA Privacy and Security Rules
- ♦ Retirement Plan Matters
- ♦ Paid Leave

#### ❖ AT-A-GLANCE TABLES AND CHARTS:

- ♦ 2019 Inflationary Adjustments applicable to Welfare and Pension Plans
- ♦ Welfare Benefit Plan Reporting Reminders
- ♦ Annual Welfare Benefit Plan Disclosure Reminders
- ♦ Determining Applicable Covered Employer Status of Certain Laws
- ♦ Increased Penalties for Certain Compliance Failures

Looking back over 2018 and forward to 2019, a word that comes to mind is *interesting*. Merriam-Webster defines this adjective as “*holding the attention, or arousing interest or a feeling that accompanies or causes special attention to an object or class of objects*”.

Specific to the employee benefits arena, efforts to repeal, replace, or repeal and replace the Affordable Care Act has moved from the Congress, albeit several attempts failed in 2017, to the Executive Branch and the courts. For a glimpse of these actions, see *The Affordable Care Act – A Year in Review* from our [\*CBIZ Health Reform Bulletin 142\*](#).

This notwithstanding, the administrative agencies and the courts have taken the position that ‘*we say what we mean, and mean what we say*’. An example of this mantra has been made clear in the wellness program arena.

#### **Wellness Programs**

As a reminder, many laws govern wellness programs including the Americans with Disabilities Act (ADA), the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Genetic Information Nondiscrimination Act of 2008 (GINA), the Affordable Care Act (ACA), the Age Discrimination in Employment Act (ADEA), as well as many state employment discrimination laws. It is imperative that the plan design comply with all applicable laws. Compliance with one law does not mean compliance with other relevant laws.

Of particular note, the HIPAA-ACA rules apply when a wellness program is part of a health plan; the ADA and GINA rules apply without regard to whether a wellness program is part of health plan. Further, the rules create differences in the offering of wellness incentives.



Our business is growing yours

[www.cbiz.com](http://www.cbiz.com)

Continued from Page 1

**ADA-GINA Rules.** As a quick review, the Equal Employment Opportunity Commission's (EEOC) wellness program rules specific to the ADA restrict incentives used to encourage participation in wellness programs when individuals are required to respond to disability-related inquiries and/or undergo medical examinations. The EEOC's rules relating to GINA address permissible incentives relating to spouses of employees who participate in employer-sponsored wellness programs. In August, 2017, the U.S. District Court for the District of Columbia vacated a portion of the EEOC's wellness program rules in the *AARP v. EEOC* case; specifically, any wellness incentive based on the collection of medical information derived from a disability-related inquiry or medical examination will not be permitted beginning January 1, 2019.

The Court further directed the EEOC to re-evaluate other aspects of its 2016 rules, specifically, the 30% ceiling on the use of incentives, rewards or penalties for participation in a wellness program. These revised rules were initially designated for release sometime in January, 2019. However, according to the EEOC's Fall Regulatory Agenda, these regulations are not expected to be released until summer, 2019, leaving employers in continued limbo.

**HIPAA-ACA Rules.** The HIPAA and ACA rules, though, are in full force and effect. A number of recent actions provide a good reminder of the importance to comply with the rules. Generally, the HIPAA nondiscrimination rules require that if a program is contingent, i.e., activity-based or based on achieving an outcome, several requirements apply:

1. The reward, taken together with all rewards from other wellness programs, cannot exceed 30% of the cost of single coverage; or, if the wellness program is made available to the family, then the cost of the relevant coverage (for example, full family, or individual plus one). If the program relates to tobacco-free standards, the incentive can be as much as 50%.
2. The program must be reasonably designed to promote health or prevent disease, and cannot be overly burdensome.
3. The program must give individuals the ability to qualify for the program, at least once annually.
4. The program must be available to all similarly situated individuals and offer a reasonable alternative method of compliance in appropriate circumstances.

Specific to activity-only programs, a reasonable alternative (or waiver of the applicable standard) must be offered to any individual for whom it is unreasonably difficult to satisfy the program criteria due to a medical condition. A reasonable alternative method or waiver must be offered in outcome-based programs if the individual does not achieve the requisite goal or outcome, without regard to whether the cause is due to a medical condition.

5. Plan materials describing wellness programs must include a notice of available alternative options about how to qualify for a reward if an alternative option is recommended by a participant's health care provider, or otherwise available through the wellness program.

**Litigation and Regulatory Oversight.** Both the courts and the Department of Labor (DOL) are saying loud and clear that the reasonable alternative requirement is mandatory. For example:

The DOL challenged Macy's benefit package specifically relating to its smoking cessation component of its wellness program in a civil action complaint filed on August 16, 2017 in the U. S. District Court for the Southern District of Ohio (*Acosta v. Macy's Inc.*, S.D. Ohio, No. 1:17-cv-00541). The challenge alleged that Macy's failed to provide a reasonable alternative to participants which would have enabled them to avoid a tobacco surcharge, ranging from \$35 to \$45, for those who failed to meet the standards of Macy's tobacco cessation program. As mentioned above, a contingent wellness program, whether activity or outcome-based, must provide a reasonable alternative to individuals under certain circumstances. Generally, a smoking cessation program can qualify as a reasonable alternative. The DOL alleged that Macy's continued to charge the smokers the higher rate without giving them an opportunity to achieve the reward.

Similarly and more recently, the DOL alleged that the fiduciaries of a group health plan breached their duty for failure to provide a reasonable alternative standard, or waiver, to plan participants [*Acosta v. Dorel Juvenile Grp., Inc.* [Civil Action Case No. 1:18-cv-02993-JRS-MJD (S.D. Ind. 2018)]]. In this matter, plan participants of the wellness program were required to pay a tobacco surcharge as part of their medical insurance premium over a five-year period, without a reasonable alternative to achieving the goal.

The Court determined that the wellness program violated the HIPAA nondiscrimination rules based on health status, as well as failed to provide a reasonable standard, and **ordered** the plan sponsor to pay restitution of \$145,635 to the 596 employees who paid a tobacco-use surcharge. Further the parties agreed to a reduced penalty assessment of over \$14,000. In addition, the plan sponsor is ordered to amend the terms of its wellness program to ensure that plan participants who utilize a reasonable alternative earn the same reward as non-tobacco users, and that the wellness program cannot require attestation of tobacco-free use more than once per plan year.

In a related civil action, the DOL sued an Ohio-based corporation over its wellness program design, again citing violation of the HIPAA nondiscrimination rules based on health status, as well as breach of fiduciary duty by the plan sponsor. In the matter of *United States Department of Labor v. Chemstation International, Inc. et al* [Docket No. 3:18-cv-00338 (S.D. Ohio Oct 15, 2018)], the company sponsors a self-insured group health plan, together with a rewards-based wellness program. Employees participating in the wellness program would receive premium discounts toward health coverage as long as they attained and maintained a specified number of healthy outcomes, such as body mass index, blood pressure, LDL cholesterol and glucose levels, as well as for nonuse of tobacco products. Those who failed to maintain healthy outcomes or declined to participate in the wellness program were charged higher premiums for health coverage. The company did not offer a reasonable alternative way for individuals to achieve the reward as required by the HIPAA law. The parties settled the matter on October 17, 2018. In accordance with the terms of the court order, Chemstation is required to pay \$59,189 reflecting excess withheld premium and lost opportunity costs directly to the affected current and former participants.

### HIPAA Privacy and Security Rules

The HIPAA privacy and security rules have been in force over 15 years. These rules govern the protection of individually identifiable medical information (PHI), set forth national standards for electronic transactions, and provide standards for securing PHI held in electronic form.

The HHS Office of Civil Rights (OCR) continues to enforce and investigate violations of these rules. For the period of April 2003 through July 2018, the OCR received 186,453 violation complaints.

Of a total of 37,670 complaints investigated, corrected action had been achieved in 69% of the violations, with 31% returned finding no violation. OCR continues to impose sanctions for HIPAA privacy violations. One of the largest HIPAA violation settlements occurred in October of this year when Anthem settled its health data breach for a record \$16 million.

To keep up with the changing times, the OCR is currently seeking **public input** in an effort to fine-tune its privacy and security rules to encourage coordination of health care while protecting patient information. Specifically, the OCR is seeking ways to:

1. Encourage information-sharing for treatment and care coordination;
2. Facilitate parental involvement in care;
3. Address the opioid crisis and serious mental illness;
4. Coordinate disclosures of PHI for treatment, payment, and health care operations as required by the HITECH Act; and
5. Change the current requirement for certain providers to make a good faith effort to obtain an acknowledgment of receipt of the Notice of Privacy Practices.

### Retirement Matters

Retirement and savings plan laws have not seen significant changes since the Pension Protection Act of 2006 was signed into law by President George W. Bush on August 17, 2006. This year, several pieces of legislation were introduced in both the Senate and the House that could foretell some retirement plan changes in 2019.

Without going into detail about specific bills, the topics receiving bipartisan support include efforts to facilitate and empower employers, particularly small employers, to offer retirement savings type plans, and to encourage individuals to save.

Concepts currently receiving bipartisan support are three-fold:

1. Enhance the ability to offer multiple employer retirement plans or association retirement plans (ARP), and relieve individual employers from certain fiduciary liability in an effort to allay the fear of offering retirement plans to employees;
2. Enhancement of automatic contribution features to persuade the inertia that is natural to human nature and encourage greater savings; and



- Enhancement of electronic distribution of materials, which may also ultimately impact the welfare benefit arena. Recognizing the evolving world in which we live, there is great demand to facilitate electronic distribution of retirement plan documents to participants.

It is very possible that some form of these retirement plan concepts will receive attention in 2019.

## Paid Leave

Paid leave continues to be the topic of the day, and such concepts continue to be enacted and implemented in the state and local level, both in the form of earned sick leave and paid family leave. These measures continue to create some angst and coordination issues, particularly for multi-jurisdictional employers. Following is a brief round-up of new laws this year:

### ♦ *Paid Sick Leave Law Changes in 2018*

*Local jurisdictions* enacting an earned sick leave benefit this year include Westchester County, New York, and the City of Duluth. New York City amended its current paid sick leave ordinance to allow use of accrued paid sick leave as safe leave beginning in May.

While both Austin and San Antonio enacted earned sick leave ordinances this year, the Texas Third Circuit Court of Appeals deemed Austin's ordinance to be unconstitutional. The Texas Legislature is expected to take up a bill in its 2019 legislative session that would preclude local jurisdictions from passing these types of laws. Another domino effect resulting from enacting this bill would be the potential impact on San Antonio's paid sick leave ordinance, which is set to take effect on August 1, 2019.

On the *state level*, Michigan enacted a state-wide paid sick leave law on December 14, 2018. Also this year, New Jersey's statewide paid sick leave law took effect on October 29<sup>th</sup>, Rhode Island's law took effect on July 1<sup>st</sup> and Maryland's law became effective on February 11<sup>th</sup>. Washington's state-wide paid sick leave law takes effect on January 1, 2019.

### ♦ *Paid Medical and Family Leave Changes in 2018*

New York's paid family leave benefit took effect on January 1 of this year, as well as the expansion of job-protected unpaid parental leave in California applicable to small employers.

Here's a look at the current status of state and local sick and family leave laws. For more information about these types of laws, contact your CBIZ representative. Also note, on an on-going basis, we include summaries of state and local paid leave changes in our *monthly Benefit Beat* newsletters.

#### States with Paid Medical and Family Leave Laws

California  
District of Columbia  
Massachusetts  
New Jersey  
New York  
Rhode Island  
Washington

#### States with Earned or Paid Sick Leave Laws

Arizona  
California  
Connecticut  
District of Columbia  
Massachusetts  
Michigan  
New Jersey  
Oregon  
Rhode Island  
Vermont  
Washington

#### Cities or Counties with Earned or Paid Sick Leave Ordinances

State	City or County
California	Berkeley, Emeryville, Los Angeles, Oakland, San Diego, San Francisco and Santa Monica
Illinois	Cook County and City of Chicago
Maryland	Montgomery County
Minnesota	Cities of Duluth, Minneapolis and Saint Paul
New Jersey	Paid sick leave ordinances of 13 local jurisdictions superseded by state paid sick leave law, which took effect Oct. 29, 2018
New York	New York City and Westchester County
Pennsylvania	Philadelphia and Pittsburgh* (*Implementation date of Pittsburgh ordinance suspended; currently under court review)
Texas	Austin and San Antonio (Implementation date of both City ordinances currently suspended)
Washington	Seattle and Tacoma (Spokane ordinance sunset Dec. 31, 2017-superseded by state paid sick leave law which took effect on Jan. 1, 2018)

On the **federal level**, Congress is also considering enacting some form of nationwide paid family leave law, such as requiring employers to offer a minimum number of compensable leave days per year, with the goal to make the program exempt from current local and state paid leave laws.

As incentive for employers to provide paid family and medical leave to their employees, the Tax Cuts and Jobs Act enacted last December added a new tax credit for wages paid to qualifying employees during any period in which an employee is absent from work due to a family and medical leave event. An employer is eligible for a general business tax credit under Code Section 45S if it has a separate written policy in place that allows all qualifying full-time employees a minimum of two weeks of annual paid family and medical leave. This credit is available to an employer without regard to whether it is subject to the federal Family and Medical Leave Act (FMLA), as long as the employer maintains the written policy that meets the wage payment criteria.

The credit generally is effective only for wages paid in taxable years of the employer beginning after December 31, 2017, and before January 1, 2020. The IRS provides additional information about this credit on its website in an **FAQ format**.

## TABLES AND CHARTS

In closing, from the esoteric to the mundane, the following pages contain a few 'at-a-glance' tables and charts reflecting:

- ♦ 2019 inflationary adjustments applicable to welfare and pension plans,
- ♦ Welfare benefit plan reporting reminders,
- ♦ Annual welfare benefit plan disclosure reminders,
- ♦ Determining applicable covered employer status of certain laws, and
- ♦ Increased penalties for certain compliance violations.

*About the Author:* Karen R. McLeese is Vice President of Regulatory Affairs for CBIZ Benefits & Insurance Services, Inc., a division of CBIZ, Inc. She serves as in-house counsel, with particular emphasis on monitoring and interpreting state and federal employee benefits law.

Ms. McLeese is based in the CBIZ Kansas City office.

*The information contained in this At Issue is not intended to be legal, accounting, or other professional advice, nor are these comments directed to specific situations.*

*This information is provided as general guidance and may be affected by changes in law or regulation. This information is not intended to replace or substitute for accounting or other professional advice. You must consult with your own attorney or tax advisor for assistance in specific situations.*

*This information is provided as-is, with no warranties of any kind. CBIZ shall not be liable for any damages whatsoever in connection with its use and assumes no obligation to inform the reader of any changes in laws or other factors that could affect the information contained herein.*





## 2019 Inflationary Adjustments - Welfare Benefit Plans

	2019	2018		
<b>FSA CAP</b>				
Limit on health flexible spending account (FSA) dollars via voluntary salary reductions	\$2,700	\$2,650		
<b>QUALIFIED TRANSPORTATION FRINGE BENEFITS</b>				
Commuter Highway Vehicle (van pooling) and Any Transit Pass	\$265	\$260		
Qualified Parking	\$265	\$260		
<b>QUALIFIED ADOPTION ASSISTANCE REIMBURSEMENT PROGRAM (IRC §137)</b>				
Exclusion Limit	\$14,080	\$13,840		
AGI Phase-out Limits	Between \$211,160 and \$251,160	Between \$207,580 and \$247,580		
<b>HEALTH SAVINGS ACCOUNTS</b>	<i>Individual</i>	<i>Family</i>	<i>Individual</i>	<i>Family</i>
HDHP Annual Deductible	\$1,350	\$2,700	\$1,350	\$2,700
HDHP Annual Out-of-Pocket Limit	\$6,750	\$13,500	\$6,650	\$13,300
Contribution Limit	\$3,500	\$7,000	\$3,450	\$6,900
<b>ACA PLANS - OUT-OF-POCKET LIMITS</b>				
<i>Applicable to insured plans offered via the marketplace, and insured and self-funded plans offered outside marketplace</i>	<i>Self-only</i>	<i>Family</i>	<i>Self-only</i>	<i>Family</i>
	\$7,900	\$15,800	\$7,350	\$14,700
<b>QUALIFIED SMALL EMPLOYER HEALTH REIMBURSEMENT ARRANGEMENTS</b>	<i>Employee-only</i>	<i>Employee's Family Members</i>	<i>Employee-only</i>	<i>Employee's Family Members</i>
Cap on annual amount of payments and reimbursements	\$5,150	\$10,450	\$5,050	\$10,250
<b>ARCHER MEDICAL SAVINGS ACCOUNTS</b>	<i>Individual</i>	<i>Family</i>	<i>Individual</i>	<i>Family</i>
HDHP Annual Deductible	Between \$2,350 and \$3,500	Between \$4,650 and \$7,000	Between \$2,300 and \$3,450	Between \$4,550 and \$6,850
Out-of-Pocket Expenses	\$4,650	\$8,550	\$4,550	\$8,400
<b>LONG-TERM CARE PREMIUMS</b>				
Under age 40	\$420		\$420	
>40 but <50	\$790		\$780	
>50 but <60	\$1,580		\$1,560	
>60 but <70	\$4,220		\$4,160	
Over age 70	\$5,270		\$5,200	



## 2018 Inflationary Adjustments - Medicare Parts A and B

	2019	2018
<b>Medicare Part A</b>		
Premium	<ul style="list-style-type: none"> <li>No monthly Part A premium for those with 40+ quarters of Medicare-covered employment</li> <li>If buys Part A: <ul style="list-style-type: none"> <li>30-39 quarters: \$240/month</li> <li>&lt;30 quarters: \$447/month</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>No monthly Part A premium for those with 40+ quarters of Medicare-covered employment</li> <li>If buys Part A: <ul style="list-style-type: none"> <li>30-39 quarters: \$232/month</li> <li>&lt;30 quarters: \$422/month</li> </ul> </li> </ul>
Deductible	<ul style="list-style-type: none"> <li>\$1,364 for first 60 days of inpatient care</li> <li>Additional \$341 per day for days 61 through 90</li> <li>Additional \$682 per day beyond the 90<sup>th</sup> day</li> </ul>	<ul style="list-style-type: none"> <li>\$1,340 for first 60 days of inpatient care</li> <li>Additional \$335 per day for days 61 through 90</li> <li>Additional \$670 per day beyond the 90<sup>th</sup> day</li> </ul>
<b>Medicare Part B</b>		
Premium (may be higher depending on income)	\$135.50 per month	\$134 per month
Deductible	\$185 per year	\$183 per year

## 2019 Inflationary Adjustments - Pension and Retirement Plans

	2019	2018
♦ Defined benefit plan annual limit	\$225,000	\$220,000
♦ Defined contribution plan annual limit	\$56,000	\$55,000
♦ Elective deferral limit for purposes of cash or deferred arrangements (401(k) plans) and tax-sheltered annuities (403(b) plans)	\$19,000	\$18,500
♦ Maximum deferral limit for 457 plans	\$19,000	\$18,500
♦ Over-age 50 catch-up contribution limit to 401(k), 403(b) or 457(b) plans	\$6,000	\$6,000
♦ Maximum deferral limit for SIMPLE plans	\$13,000	\$12,500
♦ Over-age 50 catch-up contribution limit to SIMPLE plans	\$3,000	\$3,000
♦ Minimum compensation considered in determining eligibility for a SEP (simplified employee pension)	\$600	\$600
♦ Threshold for highly compensated employee (HCE)	\$125,000	\$120,000
♦ Key employee compensation limit for top heavy plan purposes	\$180,000	\$175,000
♦ Annual compensation limit	\$280,000	\$275,000



## Welfare Benefit Plan Reporting Reminders

Form	To Whom	Due Date
<b>Form 5500</b>	Department of Labor – Employee Benefit Security Administration (EBSA) <a href="http://www.efast.dol.gov">http://www.efast.dol.gov</a>	Within 7 months of end of plan year
<b>Form M-1</b> (Form M-1 filers must also file Form 5500)	EBSA <a href="http://www.askebsa.dol.gov/mewa/">http://www.askebsa.dol.gov/mewa/</a>	March 1 of each year
<b>Form W-2</b> <i>Welfare benefit plan reporting includes:</i> <ul style="list-style-type: none"> <li>◆ Aggregate cost of health coverage (Box 12, using Code DD). Note, employers filing &lt;250 Form W-2s per year remain exempt from reporting the aggregate cost of health coverage on the Form W-2 until future IRS guidance is issued.</li> <li>◆ HSA employer contributions plus amounts employees elect to contribute via an IRC §125 cafeteria plan (Box 12 - Code W)</li> <li>◆ Total amount of permitted benefits received under a qualified small employer health reimbursement arrangement (QSEHRA) (Box 12 - Code FF)</li> <li>◆ Disability income/sick pay benefits received by from third party payer</li> <li>◆ Amounts reimbursed via dependent care assistance program plus amounts exceeding maximum \$5,000 exclusion (include in Boxes 1, 3 and 5)</li> <li>◆ Cost of group term life insurance over \$50,000 (Table I rates) reported in Boxes 1, 3 and 5; and Box 12 - Code C</li> <li>◆ Additional Medicare tax withholding on earnings exceeding \$200,000 per calendar year (Box 6)</li> </ul>	Internal Revenue Service (IRS) <a href="http://www.irs.gov/">http://www.irs.gov/</a>  Form W-2 Instructions (2018)	January 31, 2019
<b>Form 1094/1095</b>		
File Forms 1094/1095	IRS	<ul style="list-style-type: none"> <li>◆ By paper: February 28, 2019</li> <li>◆ Efile: April 1, 2019</li> </ul>
Furnish Form 1095	Individuals listed in Forms 1094 and 1095	Due date extended from Jan. 31, 2019 to March 4, 2019
<b>Form 720</b> for purposes of Patient Centered Outcome Research (PCOR) fee	IRS	July 31 <sup>st</sup> of each year
<b>Medicare Part D Creditable Coverage Form</b> <a href="http://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/CCDisclosureForm.html">http://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/CCDisclosureForm.html</a>	Centers for Medicare & Medicaid Services (CMS)	Within 60 days of the commencement of the plan year



## Annual Welfare Benefit Plan Disclosure Reminders

<i>Document</i>	<i>To Whom</i>	<i>Timeframe</i>
<b>Summary Annual Report</b> (applicable to plans filing Form 5500)	Plan participants and certain beneficiaries	Annually - within 9 months after close of plan year
<b>Annual Women's Health and Cancer Rights Act (WHCRA) Notice</b>	Plan participants and certain beneficiaries	Annually
<b>Medicaid/CHIP Premium Assistance Notice</b> (available in <i>English &amp; Spanish</i> )	All employees living in states providing premium assistance	Annually
<b>Medicare Part D Creditable Coverage Disclosure Notice</b>	All Medicare-eligible individuals including current and former employees and Medicare-eligible dependents covered by plan or become eligible to enroll in plan	Annually
<b>Summary of Benefits and Coverage (SBC)</b> Available from <i>DOL</i> and <i>HHS</i>	All plan participants	Annual disclosure if related health plan contract renews on annual basis

## Determining Applicable Covered Employer Status

<i>Law</i>	<i>Employee Threshold</i>
Affordable Care Act – Employer Shared Responsibility Penalty	50 full-time employees or full-time equivalent employees. Review number of employees at end of each calendar year for purposes of determining whether the shared responsibility requirements apply in following year
Age Discrimination in Employment Act (ADEA)	<ul style="list-style-type: none"> <li>State and local governments without regard to the number of employees; and</li> <li>Private sector employers engaged in a business or industry affecting interstate commerce, who employ 20 or more employees on 20 or more calendar weeks in the current or preceding calendar year.</li> </ul>
Americans with Disabilities Act (ADA)	15 or more employees on 20 or more calendar weeks in the current or preceding calendar year
Consolidated Omnibus Budget Reconciliation Act (COBRA)	20 or more common law employees on at least 50% of the business days in the preceding calendar year; includes full-time, part-time, and seasonal employees
Family and Medical Leave Act (FMLA)	Applies to public and private employers who employ 50 or more employees on each working day in 20 or more calendar weeks in current or preceding calendar year
Health Insurance Portability and Accountability Act (HIPAA)	Applies to all public and private employers employing at least two participants who are current employees
Medicare Secondary Payor Rules (MSP Rules)	<ul style="list-style-type: none"> <li><i>Medicare due to age:</i> 20 or more full or part-time employees on at least 20 calendar weeks in current or preceding calendar year</li> <li><i>Medicare due to disability:</i> 100 full or part-time employees on at least 50% of regular business days in preceding calendar year</li> <li><i>Medicare due to end-stage renal disease:</i> Applies without regard to employer size</li> </ul>

*Determining Applicable Covered Employer Status, cont'd*

<i>Law</i>	<i>Employee Threshold</i>
Pregnancy Discrimination Act (PDA)	Public sector employers, and private sector employers engaged in a business or industry affecting interstate commerce, who employ 15 or more employees on each working day in at least 20 or more calendar weeks in the current or preceding calendar year. The law does not apply to the federal government, Indian tribes, or a department or agency of the District of Columbia.
Uniformed Services Employment and Reemployment Rights Act (USERRA)	Applies to all public and private employers, regardless of size

### Increased Penalties for Certain Compliance Violations

Federal government agencies who enforce the law, including the Departments of Labor, Treasury and Health and Human Services, and the Equal Employment Opportunity Commission, have authority to adjust civil penalties attributable to compliance failures. As a general rule, the DOL and EEOC announce their respective adjusted penalties in January of each year; thus, at the time of this writing, the 2019 amounts have not been announced yet, and designated "to be determined"(TBD) below.

	<b>2019 Penalty Amount</b>	<b>2018 Penalty Amount</b>
Failure or refusal to file the annual Form 5500	TBD (minimum of 2018 amount)	Up to \$2,140 per day
Failure to file Form M-1	TBD (minimum of 2018 amount)	Up to \$1,558 per day
Failure to provide Summary of Benefits and Coverage (SBC)	TBD (minimum of 2018 amount)	Up to \$1,128 per failure
Failure to notify employees of Medicaid Premium Assistance and CHIP coverage opportunities	TBD (minimum of 2018 amount)	Up to \$114 per day
Failure to file a correct information return (Examples: Forms 1094/1095 and W-2)	\$270 per return (total penalty cap of \$3,339,000 per calendar year)	\$270 per return (total penalty cap of \$3,275,500 per calendar year)
Failure to provide correct payee statement (Examples: Forms 1094/1095 and W-2)	\$270 per statement (total penalty cap of \$3,339,000 per calendar year)	\$270 per statement (total penalty cap of \$3,275,500 per calendar year)
Failure to comply with protections afforded under Genetic Information Nondiscrimination Act (GINA)	TBD (minimum of 2018 amount)	Up to \$114 per day of noncompliance
Failure to post the Family and Medical Leave Act workplace posting	TBD (minimum of 2018 amount)	Up to \$169 per separate offense
Failure to post the EEOC workplace posting, "Equal Employment Opportunity is the Law"	TBD (minimum of 2018 amount)	\$545 per violation