Employee Benefits Compliance Briefing

Fall 2025

Stay Compliant

Welcome to the UBA Partner Firm exclusive quarterly newsletter, delivering insights into employee benefits and labor law compliance.

This Issue

1. Reproductive Health Care Privacy Rule Struck Down
2. Higher ACA Affordability Threshold and Larger Employer Penalties
3. New Federal Tax Breaks on Overtime and Tips
4. The Benefits of an ERISA-Covered Severance Plan: Lessons from a Recent Court Decision
5. Strategies for Addressing Financial Stress in the Workforce
6. IRS Clarifies Employer Responsibilities for Uncashed Retirement Plan Distribution Checks

About UBA

United Benefit Advisors® (UBA) is the nation's leading independent employee benefits advisory organization with more than 200 offices throughout the United States and Canada. UBA empowers 2,000+ advisors to maintain independence while capitalizing on each other's shared knowledge and market presence to provide best-in-class services and solutions.

UBA | Shared Wisdom. Powerful Results.®

Fisher Phillips

Reproductive Health Care Privacy Rule Struck Down

A Texas federal court ruling on June 18, 2025, blocked the federal government from enforcing the 2024 HIPAA changes that were designed to protect the privacy of reproductive health information on the grounds that the U.S. Department of Health and Human Services (HHS) exceeded its regulatory authority under HIPAA. These changes, known as the HIPAA Privacy Rule to Support Reproductive Health Care (the "Final Rule"), were intended to limit how health information could be used or shared in connection with legal investigations or proceedings related to reproductive health care that is legal under the circumstances. As a result, HHS can no longer enforce these specific HIPAA provisions nationwide. The ruling applies to all employers and health plans, not just those in Texas. The ruling may be appealed and ultimately reinstated, but for now the rule is not enforceable.

This means that plan sponsors are no longer required to implement those specific privacy-related changes — but all other HIPAA obligations remain in place.

Background: What Was the Reproductive Health Privacy Rule?

In April 2024, the HHS updated the HIPAA Privacy Rule to protect individuals' reproductive health information following the *Dobbs v. Jackson Women's Health Organization* decision. These updates:

- Prohibited HIPAA-covered entities (like employer-sponsored group health plans) from sharing reproductive health information for investigations, lawsuits, or other proceedings if the care was lawful.
- Required organizations to get a signed attestation from anyone requesting such information in connection with legal or oversight activities that such information was not for an impermissible purpose.
- Required updates to HIPAA policies, business associate agreements (BAAs), and employee training by December 23, 2024.
- Required updates to the plan's Notice of Privacy Practices by February 16, 2026.

Employer Action Items

- Stop implementation of the reproductive health care rule requirements.
  If you have not yet updated HIPAA policies, Business Associate Agreements, or Notices of Privacy Practices to comply with the 2024 changes, changes are no longer needed.

  If you already made changes to comply with the rule, those updates can be reversed or revised. Keep in mind that the rule is still in flux, so there is no immediate need to roll back the changes already made.

- Continue to follow standard HIPAA rules.
  The court's ruling only blocks the reproductive health-related changes. All other HIPAA Privacy and Security Rule requirements still apply, including:
  - Maintaining HIPAA policies and procedures
  - Issuing HIPAA-compliant Notices of Privacy Practices
  - Having signed Business Associate Agreements in place
  - Ensuring staff are trained in HIPAA compliance
- Review your state's privacy laws.
  Some states have their own laws that may protect reproductive health information, and those laws still apply. Employers operating in multiple states should check with legal counsel to make sure they follow applicable state-specific rules.
- Watch for future changes.
  This area of law is still evolving. The Final Rule was part of a broader federal response to changing reproductive rights, but the current administration has signaled a broader effort to roll back federal rules through an Executive Order issued in April 2025.

  It's unclear whether the federal government will appeal this court decision, and employers should continue to monitor further updates from HHS or the courts.

Higher ACA Affordability Threshold and Larger Employer Penalties in 2026

The Internal Revenue Service (IRS) recently released new figures for determining affordability of employer-sponsored health coverage and increased employer penalties for failing to comply with the Affordable Care Act's (ACA) employer shared responsibility mandate.

What's Changing in 2026

Affordability Percentage Rises to 9.96%

For plan years beginning in 2026, the IRS established the ACA affordability threshold at 9.96% of household income – up from 9.02% in 2025. Coverage is considered affordable if the required employee contribution for the lowest-cost, self-only option with minimum value does not exceed 9.96% of the employee's household income. Employers can demonstrate affordability without regard to actual household income by using one of three IRS-recognized safe harbors: (1) the federal poverty line (FPL), (2) rate of pay, or (3) W-2 method.

To automatically satisfy affordability under the FPL safe harbor (which also allows for streamlined ACA reporting) employers should ensure that their lowest-cost, minimum-value plan option is no higher than $129.90 per month for employee-only coverage (up from $113.20 in 2025). Employers in Alaska and Hawaii may charge slightly higher amounts due to the difference in poverty rates in those states. Employers charging more than the FPL rates must rely on either the rate of pay or Form W-2 safe harbors to ensure premiums are affordable.

Employer Penalties Increase

Applicable large employers, or "ALEs," (50+ full-time equivalents) must ensure that at least 95% of full-time employees (and their dependents) are offered affordable, minimum value coverage, or may face penalties under Internal Revenue Code § 4980H(a). If coverage is offered but not affordable, penalties under § 4980H(b) may apply to those receiving premium tax credits.

For 2026, the IRS increased the § 4980H penalties:

§ 4980H(a): $3,340 per full-time employee per year – a $440 increase from 2025.
§ 4980H(b): $5,010 per affected employee per year – a $660 increase from 2025.

Employer Action Items

- Reassess premium contributions.
  Review the cost of your lowest-cost self-only health coverage. If employee contributions exceed 9.96% of household income and the Plan does not fall under any other safe harbor method (W-2, Rate of Pay, FPL), affordability may fail.
- Select and test safe harbors.
  Consider which affordability safe harbor best fits your workforce.
- Update benefit design if needed.
  If employee costs exceed the new threshold, consider lowering premiums, increasing employer subsidy, or adding minimum value tiers to maintain affordable coverage.
- Track full-time employee count.
  Monitor your ALE status and ensure offers cover at least 95% of eligible employees – reporting and penalty exposure hinge on accurate employee counts.

New Federal Tax Breaks on Overtime and Tips

The recently passed "One Big Beautiful Bill" Act (OBBBA) introduced a temporary tax benefit for tipped and hourly employees by allowing them to deduct portions of their tip and overtime income from federal taxes. This change, effective for tax years 2025 through 2028, has the potential to make hospitality and similar jobs more attractive. For employers, it presents both opportunities and new compliance obligations.

Under the new law, eligible workers can deduct up to $25,000 of tip income and up to $12,500 of overtime income from their federal taxable income each year (or up to $25,000 if married and filing jointly). These deductions are aimed at boosting take-home pay for workers in industries with historically variable income and demanding schedules.

Who Qualifies?

To be eligible, employees must have adjusted gross income (AGI) of $150,000 or less for single filers, or a combined AGI of $300,000 for joint filers. The limits will be indexed for inflation beginning in 2026. The Treasury Department will publish a list of eligible tipped occupations by October 2, 2025.

Tip Income Deduction

- Available to employees in customarily tipped occupations (servers, bartenders, hotel workers, and hairstylists).
- Applies only to voluntary tips from customers, whether cash or charge, and includes tip-sharing arrangements. Automatic service charges do not qualify.
- Tips must be reported to the employer and included the employee's W-2 or 1099 to qualify.
- The maximum annual deduction for tip income is $25,000 per individual.
- Individuals may take the standard deduction and the tip deduction on the same return.

Overtime Income Deduction

- Applies only to the premium portion of overtime wages as defined under the Fair Labor Standards Act (FLSA) (that is, the premium above the regular hourly rate for time worked beyond 40 hours in a week). Overtime pay based on non-FLSA requirements such as a union contract or enhanced overtime from the employer are not eligible for the deduction.
- Employees must be eligible for and actually receive FLSA-compliant overtime pay.
- The maximum deduction is $12,500 per individual, or $25,000 for married couples filing jointly.

These deductions will only apply for tax years 2025 through 2028, unless extended by Congress.

What This Means for Employers

This tax change is likely to create a more attractive compensation environment for workers in the food service, hospitality, retail, and personal services sectors. But it also brings new responsibilities for employers, especially in payroll and reporting.

Increased Recruitment and Retention Advantage

These deductions could improve employee satisfaction and retention by increasing effective take-home pay, particularly for jobs with high tip or overtime potential. Employers in competitive labor markets may want to highlight these tax advantages in hiring and onboarding materials.

Payroll System Adjustments

Employers will need to retroactively track and report tip and overtime income separately to support employee eligibility and reporting. This means payroll systems may require reconfiguration to:

- Isolate tip income reported for payroll purposes
- Track FLSA-defined overtime premium pay distinctly from regular wages
- Ensure W-2 forms correctly reflect these categories

More Complex Year-End Reporting

Form W-2 will need to clearly identify deductible amounts (tip income and overtime premium pay) to help employees claim the appropriate deductions. Employers should prepare for potential updates to IRS W-2 instructions and software integration challenges.

Staff Training for HR and Payroll Teams

Human resources and payroll staff will need guidance on the eligibility criteria and reporting requirements. Employers may also face an increase in employee inquiries as workers look to understand how these deductions affect their taxes.

Employer Action Items

- Evaluate payroll system capabilities.
  Work with your payroll provider or internal team to ensure systems can identify, track, and report qualifying tip and overtime income.
- Plan for W-2 modifications.
  Anticipate necessary changes to year-end reporting and W-2 disclosures to support employee deductions.
- Educate staff and workers.
  Prepare HR and payroll teams to communicate the benefit clearly and help employees understand how to take advantage of the new deductions.
- Highlight in recruiting materials.
  Emphasize these deductions in job postings and candidate conversations to help attract and retain workers in a tight labor market.

The Benefits of an ERISA-Covered Severance Plan: Lessons from a Recent Court Decision

Employers offering severance benefits may have been asked to consider whether their plan is covered by ERISA or not. Most employers would prefer not to be covered by ERISA to avoid documentation and reporting requirements. However, in attempting to structure their severance plans to avoid ERISA obligations, employers may be missing out on meaningful protections offered by ERISA in severance litigation. A recent decision from the First Circuit Court of Appeals in *Orabona v. Santander Bank, N.A.* serves as a timely reminder of the practical advantages of being an ERISA-covered severance plan when severance disputes arise.

The Value of ERISA Preemption

Many employers do not realize that ERISA is designed not only to protect employees, but to protect employers as well. ERISA protects employers from a patchwork of state laws applicable to their benefits to allow uniform plan administration nationwide and limits costly actions against employers for claims other than benefits or fiduciary relief. Specifically, ERISA preempts state law claims, meaning only claims under ERISA are allowed. This protects employers from more costly and unpredictable state law claims. If a severance plan qualifies as an ERISA plan, then state law claims that expose employers to broad remedies, including punitive damages, emotional distress, and jury trials can be avoided.

In contrast, ERISA typically limits employee remedies to the recovery of benefits due under the plan, enforcement of plan terms, potential reinstatement of coverage, and, at the court's discretion, attorneys' fees. ERISA provides employers with valuable procedural protections:

- Employees must exhaust the plan's internal claims and appeals process before filing a lawsuit.
- Disputes are adjudicated in federal court under a uniform body of law.
- If the plan grants discretionary authority to the administrator, courts generally defer to the plan's decision unless it is arbitrary and capricious.

The Orabona Case: A Helpful Example

In *Orabona*, a former employee sued her employer in Rhode Island state court, asserting that she was wrongfully terminated just days before a departmental layoff to avoid paying her severance. She raised multiple state law claims, including wrongful termination and fraud. However, the court dismissed her lawsuit, holding that her claims were preempted by ERISA since the Company's severance policy was an ERISA-regulated plan.

The case underscores how ERISA preemption can bar state law claims that are intertwined with plan benefits. The court emphasized that even if a lawsuit is framed as a wrongful termination case, ERISA preemption applies if resolving the claims would require interpreting the terms of an ERISA-regulated severance plan.

What Makes a Severance Plan an ERISA Plan?

ERISA applies to severance plans that require ongoing administrative discretion, rather than one-time or automatic payments. Courts generally look at two key factors:

1. Ongoing Administrative Scheme: If the plan requires individualized determinations of eligibility or benefit amounts, it is more likely to be considered an ERISA plan.
2. Employer Discretion: If the plan administrator has discretion to interpret terms and decide who qualifies for benefits, ERISA likely applies.

For example:

- Not ERISA: A one-time severance payout to a terminating employee in a lump sum of a fixed dollar amount.
- ERISA: A severance policy (formal or informal) that requires the administrator to determine whether an employee was terminated for cause or layoff, or whether the employee met other eligibility criteria, and to calculate severance under a formula.

Employer Action Items

- Review severance plans for ERISA applicability.
  Assess whether your severance arrangements include elements of discretion and ongoing administration that would bring them under ERISA.
- If ERISA coverage is desired, draft accordingly.
  Work with counsel to ensure the plan includes discretionary authority, individualized eligibility criteria, and proper claims procedures.
- Ensure ERISA compliance.
  Maintain a written plan document, summary plan description, ERISA-compliant claims and appeals process, and Form 5500 reporting if the plan covers 100 or more employees.
- Educate employees.
  HR and legal teams should understand the protections ERISA affords and how to maintain those protections.
- Evaluate litigation exposure.
  For plans that may not fall under ERISA, consider the potential liability under state law and weigh whether a redesign is warranted.

Strategies for Addressing Financial Stress in the Workforce

The financial pressures facing today's workforce continue to grow, and employers are exploring new ways to help employees secure their financial futures. Financial wellness programs have become one of the most sought-after employee benefits.

The recently passed "One Big Beautiful Bill" Act (OBBBA) introduced Trump Accounts, a new, tax-advantaged savings vehicle for children. The OBBBA also expanded other benefit programs such as an increase to dependent care flexible spending account (FSA) limits and student loan repayment assistance.

Trump Accounts are just one option in your toolkit. Employers have a unique opportunity to help support their workforce's financial health while also improving productivity, engagement, and retention through a myriad of financial wellness benefit options.

Understanding Financial Wellness Benefits

Financial wellness and planning benefits encompass a wide range of offerings that help employees manage financial challenges and improve financial literacy. Examples include:

- Retirement plans and employer matches
- Financial education and coaching
- Emergency fund access
- Student loan assistance
- Disability and life insurance
- Education expense support
- Work-related stipends and reimbursements
- Flexible payday options
- Personal financial assistance

Leading industry groups encourage employers to assess their current financial wellness programs to ensure they are keeping pace with employee needs, especially considering evolving tools like AI-based financial education, updates to benefits offerings, and the growing demand for support among low-income workers and caregivers.

Trump Accounts

Trump Accounts are a tax-advantaged savings vehicle created under the OBBBA, designed to help children build long-term financial security. The accounts function like an IRA, with investment growth sheltered from taxes until withdrawals are made. Funds can't be accessed until the beneficiary turns 18, when they become subject to the same tax and penalty rules as traditional retirement accounts, with certain exceptions for qualifying expenses.

Eligible children born between 2025 and 2028 will automatically receive a $1,000 federal deposit to start their account. Parents, employers, and others can contribute additional funds, with a maximum annual contribution of $5,000 (to be indexed annually for inflation). Of the $5,000 limit, employers can contribute up to $2,500. Employer contributions will be permitted beginning in mid-2026, and organizations that choose to offer this benefit must establish a written plan document and meet nondiscrimination standards like those for dependent care assistance plans. Further administrative guidance from the IRS is expected to clarify program details and compliance requirements.

Trump Accounts are a novel addition to the benefits landscape, but they should be considered alongside other tools that can help employees reduce financial stress, plan for the future, and feel supported in their financial goals.

Other OBBBA Employee Benefit Updates

In addition to Trump Accounts, the OBBBA contains other notable benefit-related provisions for employers to consider.

Dependent Care FSAs

Since 1986, the dependent care FSA limit has been $5,000, with no inflation adjustments. The OBBBA raises the limit to $7,500 (or $3,750 for married couples filing separately) for plan years starting in 2026. However, the new cap is *not* indexed for inflation.

Unfortunately, many employers already struggle to pass the 55% Average Benefits Test, which can exclude highly paid employees from the tax benefit, and the higher limit may make compliance even more challenging. Employers planning to adopt the increased limit should coordinate with their FSA third-party administrators to update plan documents, revise employee communications, and highlight the change during open enrollment to help maximize participation.

Student Loan Repayment Assistance

Employers can provide up to $5,250 per year in tax-free educational assistance through a qualified educational assistance program (QEAP), which must have a written plan and be offered to all eligible employees. Previously, a QEAP could be used for student loan repayment only on a temporary basis—initially allowed by the CARES Act and extended through 2025. The OBBBA makes this student loan repayment feature permanent and introduces annual inflation-based increases to the $5,250 cap beginning in 2026.

Broader Financial Wellness Strategies to Consider

Strengthen retirement readiness. Traditional retirement plans remain a cornerstone of financial wellness. Evaluate your 401(k), 403(b), or similar plan to ensure:

- Competitive employer match rates.
- Access to both pre-tax and Roth contributions.
- Features from the SECURE 2.0 Act, such as emergency savings-linked accounts or student loan matching.

Expand non-retirement financial wellness support. More employers are offering:

- Access to financial education resources
- AI-driven financial planning tools
- Personalized financial coaching
- Credit counseling services

Tailor these offerings to meet the diverse needs of your workforce, especially across different income levels.

Offer family care benefits. Employees balancing family responsibilities are often under financial strain. Consider:

- Child care support: Despite increasing demand, on-site child care benefits remain rare. Costs can exceed $2,300 per month for infant care in many states.
- Elder care support: About 14% of the U.S. workforce provides unpaid elder care. Yet few employers offer elder care referral services or subsidies which is a growing need given demographic shifts.
- Long-term care insurance: Voluntary benefits can help employees plan for future needs.
- Pet insurance: With more households having pets than children, pet insurance is a growing, relatively low-cost benefit (offered by 22% of employers in 2024).

Educate employees about your benefits. Boost participation rates and financial outcomes by providing clear, ongoing education about retirement plans and other financial wellness benefits.

Employer Action items

- Survey employees to understand their top financial stressors and priorities.
- Review your current benefits portfolio in light of new OBBBA provisions, including Trump Accounts, higher dependent care FSA limits, and permanent student loan repayment options.
- Enhance communication around existing benefits to improve participation and perceived value.

IRS Clarifies Employer Responsibilities for Uncashed Retirement Plan Distribution Checks

Employers that sponsor retirement plans or self-insured welfare plans often face questions about handling missing participants and uncashed checks. While the Department of Labor (DOL) and Internal Revenue Service (IRS) have not addressed this issue in full, over the past few years the DOL has released helpful guidance for employers regarding uncashed retirement plan checks.

IRS Revenue Ruling 2025-15 now offers important clarification on tax withholding and reporting obligations when a retirement plan distribution check goes uncashed, and a replacement check is later issued.

The Issue

In the IRS's example, an employer issued a distribution check from a qualified retirement plan to a former employee, withheld the required federal income taxes, and reported the distribution accordingly. The check (Check 1) was never cashed, and the employer ultimately cancelled it. Later, the employer issued a new check (Check 2) for the same accrued benefit.

This situation raises several compliance questions:

1. Can the employer recover the taxes it already remitted on the uncashed check?
2. Does the second check trigger new withholding or reporting obligations?

The IRS's answers reinforce the need for employers to handle distributions or plan payments carefully.

Key Takeaways from Rev. Rul. 2025-15

No refund or adjustment for withheld taxes on uncashed checks.

Once taxes are correctly withheld and remitted to the IRS (as they were with Check 1), the employer is not entitled to a refund or adjustment, even if the check is never cashed. This means the employer cannot recover the tax that was sent to the IRS, nor can it reapply that amount toward future obligations. However, the amount of Check 2 should be reduced by the withholdings from Check 1 so that the participant receives the same net amount that was paid in Check 1.

Second checks may or may not trigger new withholding.

If Check 2 is for the *same* amount as Check 1 (with no earnings added), no new withholding is required – the taxes were already withheld when Check 1 was issued. However, if the participant's benefit increased between the original and replacement checks (due to plan earnings), the excess must be treated as a new distribution and is subject to withholding.

Reporting obligations depend on benefit value.

Employers must report the original designated distribution in Check 1 on Form 1099-R for the year in which it was issued, even if the check was never cashed. If the second check results in a larger total distribution or payment, only the *additional* amount must be reported again on a new 1099-R in the year of Check 2.

Why This Matters for Employers

Uncashed distribution checks are common in both retirement plans and welfare plans, especially when participants move or fail to update their contact information. However, even if a participant never receives or deposits the funds, the tax and reporting clock may have already started. The IRS expects plan administrators to:

- Withhold and remit taxes when the distribution is initiated.
- Withhold and report again if any additional amount is later paid.
- Report retirement plan distributions on Form 1099-R.

Uncashed checks don't erase an employer's withholding and reporting duties. Trying to reverse those transactions later is not an option under current IRS rules.

Employer Action Items

- Maintain accurate participant records.
  Ensure address records are up to date to minimize the risk of checks going uncashed, which should include periodic missing participant searches in accordance with DOL guidelines.
- Document all distribution activity.
  Track the issuance, cancellation, and reissuance of checks, along with corresponding tax treatment and plan accounting.
- Withhold and report at the time of original distribution.
  Don't delay tax withholding and reporting based on whether a check is cashed.
- Evaluate the need for additional withholding.
  If the benefit amount changes before a replacement check is issued, treat any increase as a new taxable distribution.
- Review and update plan procedures.
  Consider establishing formal procedures for uncashed checks, including timelines for cancellation, criteria for reissuance, and communication protocols.

LOCAL SERVICE. NATIONAL PRESENCE.