

## LEGISLATIVE UPDATE

### By Doug Eppler

A number of federal agencies have announced changes – and some proposed changes – that will keep employee benefit and compensation professionals on their toes.

#### **Target Date Funds**

The Department of Labor (DOL) proposed new rules requiring employers offering target date and similar retirement funds as an investment option in their 401(k) and other contribution plans to disclose more about those funds. According to *BusinessInsurance.com*, the DOL wants employers to reveal how the asset allocations of target date funds (named for their mix of equities and fixed-income investments targeted to reflect and employee's age) will change over time and when the funds will reach their most conservative investment positions. The proposed rules would also require graphical illustrations of how the funds' asset allocation will change over time and explanations of the relevance of retirement dates featured in the names of funds.

#### **FLSA and FMLA Cases**

The DOL recently partnered with the American Bar Association (ABA) to aid plaintiffs in Federal Labor Standards Act (FLSA) and Family and Medical Leave Act (FMLA) cases. In December 2010, the DOL began providing a toll-free number for an ABA-approved attorney referral system to workers whose claims the Wage and Hour Division chooses not to pursue. Because of this first-of-a-kind initiative, some law firms warned employers of the potential increase in both single-plaintiff and collective action litigation now that claimants who'd previously been left to their own resources when the DOL declined to bring a case are now being referred to private lawyers. One law firm's recent alert warned that the DOL may be including in their decline notices information regarding their initial determinations of violations and back wages – potent fuel for any plaintiff's legal fire.

#### **GINA**

Regulations regarding the Genetic Information Nondiscrimination Act of 2008 (GINA) took effect January 10, 2011. Title I of GINA prohibits genetic discrimination in health coverage, while Title II, among other things, prohibits the use of genetic information in employment decisions; requires that genetic information be maintained as a confidential medical record; and requires employers to post in the workplace an EEOC-prepared notice summarizing employee rights under GINA. Two interesting notes: 1) Among the things potentially affected by GINA are wellness programs that may involve the acquisition of genetic information, and 2) newly released regulations clarify that discrimination could result in sanctions against an employer under Title II even in cases where sanctions may also be imposed on a group health plan under Title I for the same actions. The bottom line? Make sure you're up on GINA. For more information, visit [www.eeoc.gov/laws/statutes/gina.cfm](http://www.eeoc.gov/laws/statutes/gina.cfm).

#### **Grandfathered Health Plans**

Finally, the Department of the Treasury revised its previously issued regulations on health plans that are "grandfathered" from certain health care reform requirements. Specifically, the revisions state that a group health plan can switch insurers without losing grandfathered status as long as the new policy does not change the design of the health plan in a way that would otherwise cause the loss of grandfathered status. These

new regulations, issued in November 2010, are not retroactive for any plans that lost status between March 23, 2010, and the issuance of the new regulations.

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