



CUT AND PASTE POST JULY, 2022

Health Care Benefits under *Dobbs*

In the wake of the Supreme Court’s decision in [Dobbs v. Jackson Women’s Health Organization](#) consumers, providers and insurers have been left with many questions about how this case will impact reproductive health and family planning services under employer and individual health plans.

In response, the U.S. Department of Health and Human Services (HHS) has issued [Know Your Rights: Reproductive Health Care](#). The Guidance reminds the public that abortion remains legal in many states, and other reproductive health care services remain protected by law. Additionally, the HHS reminds the public that the Affordable Care Act (the “ACA”), including its provisions regarding preventive care, remain in full force and effect and generally includes various types of birth control/family planning methods in health plans with no out-of-pocket costs. Additionally, other preventive care services such as well-woman visits (e.g., pap smears); counseling/screening; breast and cervical care screening; prenatal care; interpersonal violence screening/counseling and HIV screening and STI counseling are generally covered services with no out-of-pocket costs.



Professional Pointer: Regardless of how you feel about the *Dobbs* decision, it’s important for benefits managers (who are usually also HR people©) to do their homework so they understand the impacts this decision had -- and did not have -- on the benefits offered to the workers in their organizations.

OSHA Unveils Construction Industry “Top 10” List

The following are the construction industry’s most frequently-cited Occupational Safety and Health Administration (OSHA) violations for fiscal year 2021 (October 2020–September 2021).

Rank	29 CFR Standard	Standard #
1	Duty to have Fall Protection	1926.501
2	Scaffolds	1926.451
3	Improper Use of Ladders	1926.1053
4	Fall Protection Training Requirements	1926.503
5	Personal Protective Equipment: Eye and Face Protection	1926.102
6	General Safety and Health Construction Provisions	1926.20
7	Personal Protective Equipment – Head Protection	1926.100
8	Specific Excavation Requirements	1926.651
9	Fall Protection Systems and Requirements	1926.502
10	Aerial Lifts	1926.453

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Professional Pointer: Each year, this “Top 10 List” is used to help set OSHA’s compliance inspections plan. So, if you’re in the construction industry, here’s a start on your 2022 Safety Plan!

In other OSHA news:

- The final Standard addressing “Occupational Exposure to COVID-19 in Health Care Settings” is scheduled to be issued in September 2022.
- Public comment addressing OSHA’s Notice of Proposed Rulemaking (NRPM), “Improve Tracking of Workplace Injuries and Illnesses” closed June 30th. The final regulation is expected to be announced in December 2022.
- On June 28, 2022, OSHA issued an “[Advance Notice of Proposed Rulemaking](#)” (ANPRM), which would revise the standards for lead exposure in the workplace. According to the ANPRM, OSHA “seeks public input on modifying current OSHA lead standards to reduce the triggers for medical removal protection and medical surveillance and prevent harmful health effects in workers exposed to lead more effectively.” The notice also seeks feedback on the permissible exposure limit as well as “[a]ncillary provisions for personal protective equipment, housekeeping, hygiene and training.” The Notice asks for public comment on 61 specific questions. Any Rule changes would apply to general industry and construction. Comments are due by August 29, 2022.

Old Business

Here’s an update to several Notices of Proposed Rulemakings (NPRM) mentioned in earlier *Cut N Paste Posts*:

- Davis-Bacon Rule – The April, 2022 *Cut N Paste Post* described a [proposed revision to Davis-Bacon](#) rules. **UPDATE:** Public comment closed May 17, 2022, and is under review.

The following were listed in the December, 2021 *Cut N Paste Post*:

- [Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights](#) – The Notice of Proposed Rulemaking Rule was published on October 14, 2021 and the comment period ended December 13, 2021.
 - ☞ **UPDATE:** The Department of Labor (DOL) is reviewing the public comment. In addition, as part of a bigger effort, on February 11, 2022, the DOL issued a “Request for Information on Possible Agency Actions to Protect Life Savings and Pensions from Threats of Climate-Related Financial Risk” (the [Climate RFI](#)). This RFI asked for public comment on 22 specific questions about ways that climate change may impact the retirement industry, and whether the DOL should take additional, broader action to protect ERISA plans from climate change risks. The Climate RFI comments were due by May 16, and are under consideration.
- [ETA Apprenticeship Programs, Labor Standards for Registration NPRM](#) – The Notice of Proposed Rulemaking was published on November 15, 2021 and the comment period ended January 14, 2022.
 - ☞ **UPDATE:** On February 16, 2022, the Office of Apprentice Services released its [updated guidance](#) for registered apprenticeship programs. Among other things, this guidance clarifies that apprenticeship programs meeting federal standards in will not be subject to state review.
- [OSHA COVID–19 Vaccination and Testing; Emergency Temporary Standard \(ETS\) Interim Final Rule](#) –
 - ☞ **UPDATE:** In response to a Supreme Court ruling, this ETS was withdrawn in February, 2022. However, OSHA reminds employers that several provisions of the “General Industry” standard may apply to the issue of COVID in the workplace, including:
 - [1910.501 - Vaccination, Testing, and Face Coverings](#)
 - [1910.504 - Mini Respiratory Protection Program](#)
 - [1910.505 - Severability](#)
 - [1910.509 - Incorporation by Reference](#)



- [Employee Benefits Security Administration \(EBSA\) Prescription Drug and Health Care Spending. Interim Final Rules](#) – The Interim Final Rule was published on November 23, 2021 and the comment period ended January 24, 2022.
 - ☞ **UPDATE:** On June 29, 2022, the EBSA published a memo responding to the public comment received. No final rule has been published.
- [OSHA Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings](#)
 - ☞ **UPDATE:** The comment period was extended to end January 26, 2022. No Final Standard has been published but, according to [an article on the SHRM website](#), on May 3, OSHA held a public meeting to discuss its ongoing activities regarding heat-related hazards, including its [Heat Illness Prevention Campaign](#), compliance assistance activities and enforcement efforts. During this meeting, OSHA reiterated what it believes are the best ways employer can prevent heat illness injuries for workers:
 - Develop a written heat illness prevention plan.
 - Provide training to managers and workers on the signs and symptoms of heat illness.
 - Ensure acclimatization.
 - Provide water.
 - Require rest breaks.
 - Provide shade and cool rest areas.
 - Monitor workers wearing face coverings.
 - Implement a buddy system.
 We are waiting for OSHA to propose and eventually adopt some or all of these recommendations into a formal OSHA standard
- [ETA Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States Notice of Proposed Rulemaking](#) – The Notice of Proposed Rulemaking was published on December 1, 2021 and the comment period ended January 31, 2022.
 - ☞ **UPDATE:** The Department of Labor received requests to extend the comment period associated with this NPRM. After review, the DOL decided not to extend the comment period. A Final Rule is pending.

Deja Vu, All Over Again

According to various sources, sometime this fall, the U.S. DOL Wage and Hour Division is expected to issue a proposal to amend the “White Collar Rule”, which implements the exemption of bona fide executive, administrative, and professional employees from the Fair Labor Standards Act’s minimum wage and overtime requirements. It’s likely this proposal will result in significant debate. The proposed rule will be posted [here](#), but your GVHRA Board will also be watching this for you!

Save the Date!



On August 18th, GVHRA will welcome Dr. Alexander Alonso, SHRM Chief Knowledge Officer, to the Gallatin Valley. In his presentation, *Workplace Origami: Making Sense of The Forces Resetting the Workplace*, Dr. Alonso will discuss the importance of great human capital management practices, the major trends impacting the future of work and how the workplace has morphed during the last 18 months.

This is going to be a GREAT presentation! Keep an eye on your email, and on the [GVHRA website](#), for location, time, and registration instructions.

