



The HR WIRE

ETC HR Employer Compliance News II *Making Compliance Connections*

January 2025

SECTION I: Notices, Reminders & Alerts & SECTION II: Noteworthy Compliance Happenings

New Workplace Labor Notice Releases

- IL – [Min Wage Notice](#), [Pay Transparency Notice](#), [E-Verify Notice](#)
- NE - [Nebraska Equal Pay](#) regulations and an updated office address.
- MI – [Paid Sick Leave Model Notice](#)
- CA – [Model Whistle Blowers Notice](#)

Reminders & Alerts!

OSHA Form 300A Accidents & Summary Posting Obligations

Applicable employers must post OSHA Form 300A Accident Summary in a public area annually from February 1 through April 30 for previous year's accidents.

Submit Form 300A Data to OSHA - **March 2, 2025**

Applicable employers must submit Form 300A Data to OSHA.

The following establishments must electronically submit their form 300A data to OSHA via the agency's Injury Tracking Application (ITA) by March 2nd of the year after the calendar year covered by the form:

- Establishments that had 250 or more employees in the previous calendar year that are currently required to keep OSHA injury and illness records, and
- Establishments that had 20-249 employees in the previous calendar year that are classified in certain industries.
- <https://www.osha.gov/injuryreporting/>

Calendar Year Benefit Plan Year Employers: CMS Part D Creditable Coverage Online Disclosure – **March 1, 2025**

As part of the disclosure requirements under Medicare Part D, employer-sponsored group health plans that offer prescription drug coverage to Part D-eligible individuals are required to submit an electronic disclosure notice to the CMS on an annual basis no later than 60 days after the beginning of each plan year, reporting whether that coverage is creditable or non-creditable. Due to 2025 CMS changes and updates that are expected to affect the credibility of employer plans; always confirm with your carrier, even if your plans were considered credible in previous years.

Plan sponsors must submit a new disclosure to CMS **no later than 60 days after the beginning of each plan year**—i.e., by **March 1 for calendar year benefit plan years**

<https://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/CCDisclosure.html>



Creditable Coverage Determination 2025

Employers that provide prescription drug coverage to individuals who are eligible for Medicare Part D must inform these individuals and CMS whether their prescription drug coverage is **creditable**, meaning that the employer's prescription drug coverage is at least as good as Medicare Part D coverage.

Under [existing CMS guidance](#), there are a few different ways for an employer to determine whether its prescription drug coverage is creditable:

- As a first step, employers with insured prescription drug plans should ask their carriers if they have determined whether the plan's coverage is creditable.
- For self-insured plans, or where the carrier for an insured plan has not made a creditable coverage determination, employers may use a **simplified determination** as long as the coverage meets certain design requirements. If it doesn't, the employer must use an **actuarial determination method**.

Part D Redesign Program Instructions for CY 2025

Previously, CMS stated in its Draft Part D Redesign Program Instructions that the simplified determination method would no longer be valid as of calendar year (CY) 2025, given the significant changes made to Medicare Part D by the IRA. However, according to the Final Program Instructions, **CMS will continue to permit use of the simplified determination methodology, without modification, for CY 2025 for group health plan sponsors who are not applying for the retiree drug subsidy.**

CMS Resources

Additional information and resources on the IRA's changes to Medicare Part D are available on CMS' [Part D Improvements webpage](#).

Employer Takeaway: There is no penalty or fee for employers that offer prescription drug coverage that is non-creditable. Non-creditable prescription drug coverage can still be a valuable benefit for employees. However, individuals (employees & dependents) need to know whether their prescription drug coverage is creditable or non-creditable. If the coverage is non-creditable and Medicare-eligible individuals fail to enroll in Part D during their initial enrollment period, they can be subject to a higher Part D premium if they enroll in Part D at a later date.

DOL Issues Opinion Letter: FMLA & State PFML Programs

The DOL Wage & Hour Division recently issued a new Opinion Letter ([FMLA 2025-01-A](#))

- DOL has advised that state and municipal PFML will be treated in the same way as workers' compensation and paid disability leave programs under the FMLA substitution of leave regulations.
- PFML for a qualifying FMLA reason must be designated as FMLA leave.
- Employers and employees may not unilaterally require that employer-provided paid leave run concurrently with PFML designated as FMLA leave, although they may agree to this substitution.

Employer takeaway: During any part of an FMLA leave where an employee is receiving disability or workers' compensation benefits, *neither the employer nor the employee can require substitution of paid time off* because such leave is not unpaid. Rather, when disability or workers' compensation benefits are being received, the employer and the employee may only *mutually agree* (where state law permits) that accrued paid time off will be used to supplement such benefits. Likewise now, when an employee is concurrently on a state and municipal paid FML, the leave is also not technically unpaid. Thus, the employer and the employee may only *mutually agree* (where state law permits) that accrued paid time off will be used to supplement such benefits.

DOL Issues Opinion Letter: Managers & Tip-pool Tops for Nonsupervisory Time

On Jan. 14, 2025, the U.S. Department of Labor's (DOL) Wage and Hour Division (WHD) issued opinion letter [FLSA2025-1](#), addressing whether a manager or supervisor can receive tips from a tip pool when working in a nonsupervisory



capacity under the Fair Labor Standards Act (FLSA). The WHD advises that employers may not allow managers or supervisors to keep any portion of other employees' tips, including from a tip pool.

According to the WHD, an employee who meets the executive employee duties test qualifies as a manager or supervisor for purposes of Section 3(m)(2)(B) and must not receive any tips from an employer-mandated tip pool even if they spend a shift performing nonmanagerial duties. This is because an employee's primary duty is determined on at least a workweek basis and does not vary from shift to shift. However, if an employee does not meet the executive duties test, even if they are the most senior employee during a particular shift, they may receive tips from an employer-mandated tip pool.

Opinion letters provide the DOL's official position on how labor and employment standards apply in specific situations. Employers that rely on opinion letters may be able to establish a "good-faith defense" under the law.

Newly Passed Legislation Modifies ACA Reporting Requirements

On Dec. 23, 2024, President Joe Biden signed two bills into law that will streamline the Affordable Care Act's (ACA) reporting requirements under Internal Revenue Code Sections 6055 or 6056. Under these reporting rules, certain employers and health coverage providers (reporting entities) must provide information to the IRS about the health plan coverage they offer (or do not offer) to their employees. They must also provide related statements to individuals regarding their health plan coverage.

Individual Statements Only Required Upon Request

Under existing rules, reporting entities must provide annual statements to each individual who is provided minimum essential coverage (under Section 6055) and each full-time employee of an applicable large employer (under Section 6056). These statements are provided using Forms 1095-B and 1095-C; however, the IRS currently allows Forms 1095-B to be provided to individuals upon request if certain requirements are satisfied.

The [Paperwork Burden Reduction Act](#) essentially codifies this alternative manner of furnishing Forms 1095-B and extends this flexibility to furnishing Forms 1095-C. Accordingly, reporting entities are no longer required to send Forms 1095-B and 1095-C to covered individuals unless a form is requested.

Electronic Consent for Individual Statements

The IRS currently allows reporting entities to offer Forms 1095-B and 1095-C to individuals electronically. The [Employer Reporting Improvement Act](#) codifies this flexibility and provides that statements can be provided electronically to individuals if they have affirmatively consented "at any prior time" (unless they have revoked such consent in writing).

Other ACA Provisions

Applicable large employers, or ALEs (generally those with 50 or more full-time employees), are subject to IRS penalties if they do not offer affordable minimum essential coverage under the ACA's employer shared responsibility ("pay-or-play") rules. The new legislation increases the time ALEs have to respond to IRS penalty assessment warning letters from 30 days to 90 days. The legislation also imposes a six-year time limit on when the IRS can try to collect assessments.

Issued Executive Order: Targeting of Illegal DEI Efforts – Federal Contractors – April 21, 2025

Overview

President Trump's EO revising EO 11246 does not alter existing federal EEO anti-discrimination laws and employer compliance obligations, it signals the new administration's focus on *combating "discriminatory and illegal preferences, mandates, policies, programs, regulations, enforcement actions, and requirements."*



Equal Employment Opportunity (EEO) refers to fair and equal treatment for designated protected classes as defined by law. EEO means that the employer gives equal consideration for a job and terms and conditions of employment to all individuals prohibiting employers from discriminating based on race, color, religion, age, marital status, national origin, disability or sex (including sexual orientation, and gender identity or expression). Nothing has changed relative to the EEO federal regulations being applicable to all employers – federal and private, alike.

On January 21, 2025, President Trump signed an executive order (EO) titled [Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#). In addition to eliminating affirmative action for federal contractors, the EO states the Trump administration's view that certain DEI programs and policies **may** violate federal civil rights law by unlawfully discriminating against individuals based on protected characteristics.

The EO encourages employers to focus on "individual merit, aptitude, hard work, and determination" when selecting people for jobs. The EO does **not** impose any new obligations or requirements. This EO excludes certain statutory obligations such as federal contractor or private-sector employment preferences for veterans from coverage.

Notably, the **EO allows federal contractors to maintain DEI programs** so long as they do not run afoul of federal (EEO) law. The EO also revokes a number of EOs which imposed affirmative action obligations on federal contractors and subcontractors in its attempt to return to merit-based employment actions that are legal and compliant with federal anti-discriminatory regulations. The elimination of such affirmative action programs should be in place by April 21, 2025.

To Recap Has Federal Law Changed for Private-Sector Employers? No, federal antidiscrimination laws remain unchanged.

Employer Takeaways Employers should review existing DEI practices to ensure that such practices do not discriminate on the basis of a federally protected class as well comply with any applicable, state regulatory requirements. Further, employers who **are** federal contractors or subcontractors should review their DEI policies and programs as well as ensure that they eliminate noncompliant affirmative action programs by April 21, 2025. Employers committed to a fair, merit-based nondiscriminatory practices adhering to compliance with EEOC antidiscrimination regulations need not change their policies, practices or initiatives.

Article: Best Practices for Employers in Managing USCIS Administrative Onsite Inspections, ICE Raids, and Form I-9 Audits

[Akerman, LLP's January 23, 2025, publication](#) walks employers through what to expect:

- During an H1B Onsite Inspection
- During an ICE Raid & Steps Employers Should Follow
- During a Form I-9 Audit

While employers may have little to no notice of various immigration enforcement measures, adequate preparation is key to minimizing disruption and the legal consequences that could result.

Supreme Court: Clarifies Evidence Standard for FLSA Overtime Exemption Disputes

On Jan. 15, 2025, the U.S. Supreme Court issued a unanimous decision clarifying the evidentiary standard for companies to show that their employees qualify for an exemption from the FLSA's minimum wage and overtime requirements. In *EMD Sales Inc. v. Carrera*, the Court ruled that employers do not need to meet a heightened "clear and convincing" evidence standard to prove their employees are exempt from minimum wage and overtime pay. To qualify for an FLSA exemption, the Court held employers instead need only meet the "preponderance of the evidence" standard traditionally applicable in civil litigation.



Employer Takeaways:

- **Evidentiary Standard:** The Supreme Court's decision confirms that employers need only meet the preponderance of the evidence standard in defending overtime exemption claims, a lower threshold than the "clear and convincing" standard the plaintiffs wanted to apply to this case. Employers should emphasize the important distinctions between the two standards when litigating exemption cases.
- **Outside Sales Exemption:** Employers seeking to apply the outside sales exemption should confirm that the employees (1) primary duties involve sales activities, and (2) regularly work away from the employer's business locations. Conflicting testimony over whether EMD's sales representatives made sales as opposed to carrying out the terms of sales that had already been made by others contributed to the District Court's ruling.
- **Continued Vigilance:** While this decision simplifies the evidentiary standard in overtime exemption cases, employers must continue to ensure proper classification of employees under the FLSA. Even under the preponderance standard, the burden of proof is still on *employers* to establish their employees properly qualify for an exemption from the FLSA's minimum wage and overtime requirements. Misclassification can still place employers at risk of significant employer liabilities.

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