TRUCKER ✦ HUSS

BENEFITS REPORT

SPECIALIZED TALENT & EXPERTISE TO SOLVE THE MOST COMPLEX OR STRAIGHTFORWARD CLIENT CHALLENGES.

With more than 30 legal professionals practicing solely in employee benefits law, Trucker Huss is one of the largest employee benefits specialty law firms in the country. Our in-depth knowledge and breadth of experience on all issues confronting employee benefit plans, and their sponsors, fiduciaries and service providers, translate into real-world, practical solutions for our clients.

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NATIONALLY-RECOGNIZED. Our attorneys serve as officers and governing board members to the country's premier employee benefits industry associations, and routinely write for their publications and speak at their conferences.

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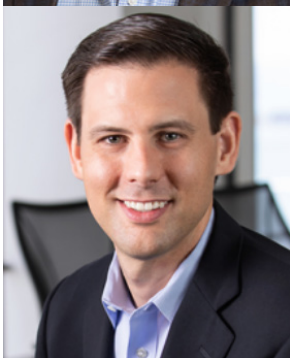
The Unlikely Intersection Between ERISA and State Laws Regulating Abortion



JOSEPH C. FAUCHER
and BRIAN D. MURRAY

NOVEMBER 2022

In the wake of the Supreme Court's recent decision in *Dobbs v. Jackson Women's Health Org.*, which overturned *Roe v. Wade* and its progeny, many states have passed, or are in the process of passing, laws that severely restrict abortion services. Assuming no federal legislation outlawing abortion is passed, issues will likely arise relating to whether health plans can cover travel expenses incurred by employees who travel to states where abortion services remain legal.

This article analyzes whether laws such as the recently passed Texas Heartbeat Act ("SB 8") — which imposes civil liability upon, and allows for injunctive relief against, persons who "aid and abet" abortions — are preempted by the Employee Retirement Income Security Act of 1974 (ERISA), in the context of health plans that provide travel expense reimbursement for abortion-related services.

INDIVIDUAL ARTICLES WILL BE AVAILABLE AT TRUCKERHUSS.COM/PUBLICATIONS

IN THIS ISSUE...

Trucker ✦ Huss Recognized in 2023 *Best Law Firms* List

Trucker Huss, APC is pleased to announce that the firm has been named a National Tier 1 firm for ERISA Litigation, for both Employee Benefits (ERISA) Law and ERISA Litigation (San Francisco, CA) and Tier 2 for Employee Benefits (ERISA) Law (Portland, OR) by U.S. News – Best Lawyers® "Best Law Firms" 2023 list.

One Trucker Huss client recently commented, *My organization has encountered rather complex benefit plan issues over the past year. Trucker Huss has provided excellent advice and guidance in an extremely proactive manner to me and my organization. I am thankful for their expertise and have complete trust in our partnership.*

Another client said, *I have been a client of Trucker Huss since the mid 1990s. I have worked at several large and complex organizations over the years and the attorneys that have been assigned to me have always been responsive, knowledgeable, and have equipped me well to make decisions and to provide guidance to my own leadership. I rest easy when I have Trucker Huss involved in any matter.*

The 2023 "Best Law Firms" ranking showcases top firms recognized by clients and peers for delivering professional excellence and for high-quality ratings. The rankings indicate a unique combination of quality in practice and legal expertise.

"We are honored to be listed in Best Law Firms for ERISA Litigation and Employee Benefits Nationally, in California, and in Oregon. Our firm remains committed to providing the highest level of services, and we appreciate the continued recognition by our clients and peers," said director Brad Huss.

In addition to the firm's ranking, three Trucker Huss attorneys were recently selected by their peers for inclusion in The Best Lawyers in America® 2023:

- **Mia Butzbaugh** — Employee Benefits (ERISA)
- **Bradford Huss** — Employee Benefits (ERISA) Law and ERISA Litigation
- **Charles A. Storke** — Employee Benefits (ERISA) Law

In addition, one attorney was selected as a 2023 Best Lawyers "Ones to Watch":

- **Dylan D. Rudolph —** Employee Benefits (ERISA) Law

If and when the issue is litigated, we believe courts will hold that state laws that prohibit (or impose significant restrictions upon) employer-sponsored, self-funded welfare plans from paying for or reimbursing abortion-related expenses, including travel and lodging expenses, have an impermissible connection with ERISA plans, and are therefore preempted by ERISA. Contrary to Congress' intent when it passed ERISA, such laws impact the relationships between plans and their participants and beneficiaries, interfere with national uniformity of plan administration, regulate a key facet of plan administration, and present an obstacle to plan fiduciaries' ability to administer plans in accordance with their terms.

By contrast, courts are likely to conclude that laws like SB 8 are *not* preempted by ERISA in the context of fully insured welfare plans, which are more subject to state regulation under ERISA's statutory scheme.

In a subsequent article, we will address ERISA's potential impact vis-à-vis state laws that purport to criminalize aiding and abetting abortions.

The Texas Heartbeat Act (SB 8)

In 2021, Texas passed SB 8, an addition to the Texas Health & Safety Code. The primary effect of SB 8 is to preclude physicians from performing abortions after they detect embryonic or fetal cardiac activity in their patients — which normally occurs approximately six weeks post-conception. The law allows for limited exceptions in instances where the physician believes a medical emergency warrants performing an abortion.

SB 8 also provides a private right of action in favor of any person, other than an officer or employee of a state or local governmental entity in Texas, against any person who performs or induces an abortion in violation of the statute, knowingly aids or abets the performance or inducement of an abortion in violation of the statute, or "intends to engage in the conduct" described above.

The term "aids or abets" within the meaning of the legislation is defined to include "...paying for or reimbursing the costs of an abortion through insurance or otherwise, if the abortion is performed or induced in violation of this subchapter, regardless of whether the person knew or should have known that the abortion would be performed or induced in violation of this subchapter." Sec. 171.208(a)(2). The statute allows the claimant in such cases to obtain injunctive relief sufficient to prevent the defendant from violating the statute or engaging in acts that aid or abet violations of the statute, as well as statutory damages in an amount not less than $10,000 for each abortion that the defendant performed, induced, aided or abetted. Other states have passed or are in the process of passing similar and even more restrictive legislation. For example, Oklahoma recently passed legislation that prohibits all abortions "except to save the life of a pregnant woman in a medical emergency."

Since *Dobbs* gives states broader leeway to regulate abortion services within their own borders, one significant open issue is the extent to which those states can limit employers' ability to pay for travel expenses for their employees to obtain abortion services in other states.

ERISA's General Preemption Provision

ERISA's general preemption language generally provides that ERISA's enforcement and fiduciary provisions shall supersede all State laws that "relate to" any ERISA-governed employee benefit plan.

ERISA's "saving clause," however, carves out from ERISA's general preemption provision state laws that regulate insurance. The so-called "deemer clause" effectively narrows the scope of the saving clause, by providing that employee benefit plans are not deemed to be insurance companies.

Taken together, the saving clause and deemer clause establish that fully insured plans — and the insurance policies through which their benefits are provided — are subject to state regulation, while self-funded plans are not subject to state regulation to the same extent.

"Relates to ..."

Courts — including the Supreme Court — have long struggled to define what it means for a state law to "relate to" an employee benefit plan. In *Shaw v. Delta Air Lines*, 463 U.S. 83, 96-97 (1983), the Supreme Court held that a state law "relates to" a plan if it has a "connection with" or makes a "reference to" a plan.

"Reference To"

State laws have a "reference to" ERISA plans when they "...act[] immediately and exclusively upon ERISA plans... or where the existence of ERISA plans is essential to the law's operation...." *Gobeille v. Liberty Mut. Ins. Co.*, 577 U.S. 312, 320. "A law does not refer to an ERISA plan if it applies neutrally to ERISA plans and other types of plans." *Louisiana Health Serv. & Indem. Co. v. Rapides Healthcare Sys.*, 461 F.3d 529, 536 (5th Cir. 2006).

It is unlikely that courts would consider SB 8 to make an impermissible "reference to" ERISA plans for purpose of the preemption analysis. In *N.Y. State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645 (1995), the Supreme Court held that the New York statute at issue there (which required hospitals to collect surcharges from patients covered by a commercial insurer but not from patients insured by a Blue Cross/Blue Shield plan) did not include a "reference to" ERISA plans, and explained that "[t]he surcharges are imposed upon patients and HMO's, regardless of whether the commercial coverage or membership, respectively, is ultimately secured by an ERISA plan, private purchase, or otherwise, with the consequence that the surcharge statutes cannot be said to make 'reference to' ERISA plans in any manner." *Travelers* at 656. Since SB 8 makes no mention of ERISA plans and treats plans no differently than insurance companies or other payors, it is unlikely that courts would consider the statute to "refer to" ERISA plans for purposes of preemption analysis.

"Connection With"

The "connection with" prong of the "relates to" analysis turns on whether the state law "governs...a central matter of plan administration" or "interferes with nationally uniform plan administration." *Gobeille*, 577 U.S. at 320, citing *Egelhoff v. Egelhoff ex rel. Breiner*, 532 U.S. 141, 148 (2001). A state law may also have an impermissible connection with ERISA plans if "'acute, albeit indirect, economic effects' of the state law 'force an ERISA plan to adopt a certain scheme of substantive coverage or effectively restrict its choice of insurers.'" *Gobeille* at 320.

In assessing whether a state statute has an impermissible "connection with" ERISA plans, courts consider ERISA's objectives "...as a guide to the scope of the state law that Congress understood would survive" and "the nature of the effect of the state law on ERISA plans." *Id.* ERISA is "primarily concerned with preempting laws that require providers to structure benefit plans in particular ways, such as requiring payment of specific benefits, or by binding plan administrators to specific rules for determining beneficiary status." *Rutledge v. Pharm. Care Mgmt. Ass'n*, 141 S. Ct. 474, 480 (2020).

The Fifth Circuit Court of Appeals (whose territory includes Texas) has recognized that "[a] uniform administrative scheme serves to minimize administrative and financial burdens by avoiding the need to tailor plans to the peculiarities of the law of each state." *Bank of Louisiana v. Aetna U.S. Healthcare Inc.*, 468 F.3d 237, 242 (5th Cir. 2006), *cert. denied*, 549 U.S. 1281 (2007). Fifth Circuit cases finding preemption note that preempted claims have "at least two unifying characteristics: (1) the state law claims address areas of exclusive federal concern, such as the right to receive benefits under the terms of an ERISA plan; and (2) the claims directly affect the relationship among the traditional ERISA entities — the employer, the plan and its fiduciaries, and the participants and beneficiaries." *Memorial Hosp. System v. Northbrook Life Ins. Co.*, 904 F.2d 236, 245 (5th Cir. 1990).

Applying these principles to SB 8, there is a strong argument that SB 8 has an impermissible "connection with" employee benefit plans to the extent its provisions could be deemed to restrict self-funded plans' ability to pay for or reimburse participants' travel expenses for travel to a state in which abortion services are legal.

ERISA Preempts State Laws that Impact the Relationships Between Plans and Their Participants and Beneficiaries

First, as stated above, the Supreme Court has noted ERISA's concern with "...preempting laws that require providers to structure benefit plans in particular ways, such as requiring payment of specific benefits..." *Rutledge, supra*, 141 S.Ct. at 480. Although SB 8 does not require payment of specific benefits, it may be interpreted to prohibit payment of benefits that plans may otherwise provide. In that sense, SB 8 arguably "...create[s] a relationship between the plaintiff and defendant that is so

intertwined with an ERISA plan that it cannot be separated." *Bank of Louisiana* at 243.

SB 8 also directly impacts the relationship between the Plan and its participants and beneficiaries, by regulating the circumstances under which some participants and beneficiaries (i.e., Texas residents) may receive benefits.

SB 8 Makes Nationally Uniform Administration of Plans Impossible

Second, there is a strong argument that SB 8 would render national uniformity of ERISA plans' administration impossible, since it would potentially preclude plans from providing benefits to participants who are Texas residents, while still enabling them to provide those same benefits to participants who reside in other states without similar abortion restrictions. The "impact on national uniformity of plan administration" issue may turn on whether a court finds that the law's impact on plan administration is significant enough to trigger preemption.

Because SB 8 does not limit Texas residents' ability to sue for aiding and abetting abortions that take place within Texas, we may see Texans suing plans and/or plan sponsors for paying for abortion-related expenses for procedures that take place outside Texas. That would impact payment of claims for any abortion-related expenses incurred by Texas residents, while allowing payment of those same claims for the benefit of residents of other states. For example, if SB 8 is deemed to subject payors to liability for (and an injunction against) paying for travel and lodging expenses for Texas residents to travel outside Texas to obtain abortion services, it would (in effect) prevent those Texas residents from receiving the same benefits as participants residing outside Texas.

Persons that invoke SB 8 in suing for paying the cost of abortions or abortion-related travel expenses may also argue that their claim is not preempted because "not every state law that affects an ERISA plan or causes some disuniformity in plan administration has an impermissible connection with an ERISA plan. That is especially so if a law merely affects costs." *Rutledge*, 141 S.Ct. at 480. Specifically, plaintiffs in Texas cases may argue that SB 8 "merely affects costs," because it subjects payors to statutory damages. However, in addition to imposing potential additional costs upon the Plan (i.e., statutory damages and attorney fees), SB 8 also provides for "injunctive relief sufficient to *prevent* the defendant from violating the statute or engaging in acts that aid or abet violations of the statute." (Emphasis added.) This injunctive relief provision enables a plaintiff to seek an injunction against the payor from paying the benefit provided for by the plan, and therefore potentially precludes participants in Texas from receiving the same benefits plans provide to participants in other states that do not restrict abortion services in the same way. Thus, there is a strong argument that SB 8 does not "merely affect[] costs."

Because SB 8 Regulates a Key Facet of Plan Administration, it Is Arguably Preempted by ERISA Notwithstanding Any Argument That it Is an Exercise of Texas's Traditional State Regulation of Health Issues

Plaintiffs who bring claims pursuant to SB 8 are likely to argue that there is a presumption against preemption in cases involving areas of traditional state regulation. However, through SB 8, the State may be inserting itself into a key facet of plan administration, which courts in other cases have held triggers preemption of laws that involve areas of traditional state regulation.

In cases involving state laws that required employers to provide certain benefits, the Court found that state laws requiring the provision of pregnancy benefits (*Shaw*) and requiring benefit plans to include minimum mental health benefits (*Metropolitan Life v. Massachusetts*, 471 U.S. 724 (1985)) "related to" ERISA plans and were therefore preempted by ERISA.

Since cases such as *Shaw* and *Metropolitan Life* hold that state laws requiring plans to provide certain benefits are preempted by ERISA, an argument can also be made that state laws *prohibiting* benefits — such as travel benefits — are similarly preempted. That is, while Texas may be attempting to exercise its power to regulate public health, it is also attempting to regulate "...a key facet of plan administration," as did the law found to be preempted in *Gobeille*.

SB 8 Presents an Obstacle to Administering Plans According to their Terms

Finally, as noted in *Egelhoff*, ERISA requires plans to specify the basis on which payments are made from a plan, and requires that fiduciaries administer plans in accordance with their terms. To the extent SB 8 prohibits payment of benefits in accordance with a plan's terms, it arguably has an impermissible "connection with" a plan and should be found to be preempted by ERISA to the extent plaintiffs sue a plan or plan sponsor for payment or reimbursement of travel and lodging expenses incident to securing legal abortion-related services outside Texas.

Temporary Relief from the Physical Presence Requirement Is Scheduled to Expire after December 31, 2022

SUSAN QUINTANAR

NOVEMBER 2022

In Notice 2022-27, the IRS extended (through December 31, 2022) the temporary relief from the requirement that participant elections under qualified plans be witnessed in the physical presence of a notary or plan representative, as set forth in Treas. Reg. 1.401(a)-21(d)(6)(i), including participant elections that require spousal consent. Unless the relief is further extended, the physical presence requirement for such elections will be in effect, once again, as of January 1, 2023.

Background

The IRS first provided relief (through December 31, 2020) from the physical presence requirement in Notice 2020-42. That period was later extended (through June 30, 2021) in Notice 2021-03. Notice 2021-04 further extended the relief (through June 30, 2022).

Under Notice 2020-42, the temporary relief was first implemented to alleviate the burden of trying to satisfy the physical presence requirement (under Treas. Reg. 1.401(a)-21(d)(6)(i)), while also attempting to adhere to the social distancing orders that came into effect to minimize the transmission of the Coronavirus Disease 2019 (COVID-19). At that time, the relief was intended to simplify the payment of certain distributions and plan loans that temporarily became available to plan sponsors

for qualified participants under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

In Notice 2022-27, the relief was extended through the remainder of this year because COVID-19 continues to pose a significant threat to the public's health.

Meeting the Standard for Relief from the Physical Presence Requirement

Notice 2020-42 provided that witnesses could rely on electronic systems that met certain requirements to satisfy the standard for relief, as described in detail below.

Plan Representatives

To avoid the need to be physically present, Notice 2020-42 provided that plan representatives could witness participant elections through the use of an electronic system that relied on live audio-video conferencing technology, as long as it satisfied the following conditions:

(1) The individual signing the election presented the representative with a valid photo ID during the audio-video conference. Photocopies of the ID could not be used or delivered to the representative either before or after the conference;

(2) The conferencing technology needed to allow for the individual and the representative to respond to each other directly and in real time. As an example, it would be unacceptable to rely on pre-recorded videos to satisfy this requirement;

(3) The individual signing the election needed to send it to the representative on the same date that it was signed either by fax or by email (or through other electronic means); and

(4) Following receipt, the representative needed to acknowledge that he or she had witnessed the signature in compliance with the above requirements. The representative then needed to provide the individual with the signed election that included his or her acknowledgement of the individual's signature. The method of providing the signed and acknowledged election to the individual had to comply with the notice requirements of Treas. Reg. 1.401(a)-21(c).

Notaries Public

To avoid the need to be physically present, a notary could witness a participant election electronically, as long as the state laws that applied to the notary permitted remote electronic notarization. Any procedure for electronic notarization needed to be operated via live audio-video conferencing technology that otherwise conformed to the electronic medium requirements for notices and participant elections, as set forth in Treas. Reg. 1.401(a)-21(d)(6).

Apart from the date through which the temporary relief remained in effect, subsequent Notices did not change this standard for relief.

Going Forward into 2023

Unless further extended, the ability for witnesses to recognize participant elections through electronic transmissions will no longer be in effect as of January 1, 2023. A further extension on the relief into 2023 is not anticipated due to the reduction in the need for stringent COVID-19 health precautions.

That said, we understand that the IRS is currently reviewing whether to modify the physical presence requirement to make the relief permanent. We will notify our readers of any further developments as they arise, including whether any additional procedural safeguards may be required to help reduce the risk of fraud or abuse in the absence of a physical presence requirement, should the IRS decide to make the relief permanent.

2023 Pension Plan Limitations

SHANNON OLIVER

NOVEMBER 2022

On October 21, 2022, the Internal Revenue Service issued Notice 2022-55, containing the cost-of-living adjustments related to retirement plan limitations under the Internal Revenue Code (the "Code"). These changes will take effect on January 1, 2023. Below are some of the key highlights.

Adjusted Limitations

- The limitation on the annual benefit under a defined benefit plan is increased from $245,000 to $265,000. (Code section 415(b)(1)(A)).
- For a participant who separated from service before January 1, 2023, the participant's limitation under a defined benefit plan under section 415(b)(1)(B) is computed by multiplying the participant's compensation limitation, as adjusted through 2022, by 1.0833.
- The annual contribution limitation for defined contribution plans is increased from $61,000 to $66,000 (Code section 415(c)(1)(A)).
- The annual compensation limit is increased from $305,000 to $330,000. (Code sections 401(a)(17), 404(l),408(k)(3)(C) and 408(k)(6)(D)(ii)).
- The limitation on the exclusion for elective deferrals is increased from $20,500 to $22,500. (Code sections 402(g)(1) and 402(g)(3)).
- The annual compensation limitation for eligible participants in certain governmental plans that, under the plan as in effect on July 1, 1993, allowed cost-of-living adjustments to the compensation limitation to be taken into account, is increased from $450,000 to $490,000. (Code section 401(a)(17)).
- The compensation amount regarding simplified employee pensions (SEPs) is increased from $650 to $750. (Code section 408(k)(2)(C)).
- The limitation regarding SIMPLE retirement accounts is increased from $14,000 to $15,500. (Code section 408(p)(2)(E)).
- The dollar limitation regarding the definition of "key employee" in a top-heavy plan increased from $200,000 to $215,000. (Code section 416(i)(1)(A)(i)).
- The dollar amount for determining the maximum account balance in an employee stock ownership plan subject to a 5-year distribution period is increased from $1,230,000 to $1,330,000, while the dollar amount used to determine the lengthening of the 5-year distribution period is increased to $265,000, up from $245,000 in 2021. (Code section 409(o)(1)(C)(ii)).
- The limitation used in the definition of "highly compensated employee" is increased from $135,000 to $150,000. (Code section 414(q)(1)(B)).
- The maximum amount of catch-up contributions individuals aged 50 or over may make to 401(k) plans, 403(b) plans, SEPs, and governmental 457(b) plans increased from $6,500 to $7,500. (Code section 414(v)(2)(B)(i)).

- The maximum amount of catch-up contributions that individuals aged 50 or over may make to SIMPLE 401(k) plans or SIMPLE retirement accounts increased from $3,000 to $3,500. (Code section 414(v)(2)(B)(ii)).

- The adjusted gross income limitation under Code section 25B(b)(1)(A) for determining the retirement savings contribution credit for married taxpayers filing a joint return is increased from $41,000 to $43,500; the limitation under Section 25B(b)(1)(B) is increased from $44,000 to $47,500; the limitation under Code sections 25B(b)(1)(C) and 25B(b)(1)(D) is increased from $68,000 to $73,000.

- The adjusted gross income limitation under Code section 25B(b)(1)(A) for determining the retirement savings contribution credit for taxpayers filing as head of household is increased from $30,750 to $32,625; the limitation under Section 25B(b)(1)(B) is increased from $33,000 to $35,625; the limitation under Code sections 25B(b)(1)(C) and 25B(b)(1)(D) is increased from $51,000 to $54,750.

- The adjusted gross income limitation under Code section 25B(b)(1)(A) for determining the retirement savings contributions credit for all other taxpayers is increased from $20,500 to $21,750; the limitation under Code section 25B(b)(1)(B) is increased from $22,000 to $23,750; and the limitation under Sections 25B(b)(1)(C) and 25B(b)(1)(D) is increased from $34,000 to $36,500.

- The deductible amount for an individual making qualified retirement contributions is increased from $6,000 to $6,500. (Code section 219(b)(5)(A)).

- The applicable dollar amount for determining the deductible amount of an IRA contribution for taxpayers who are active participants filing a joint return or as a qualifying widow(er) is increased from $109,000 to $116,000. The applicable dollar amount for all other taxpayers who are active participants (other than married taxpayers filing separate returns) is increased from $68,000 to $73,000. The applicable dollar amount for a taxpayer who is not an active participant but whose spouse is an active participant increased from $204,000 to $218,000. (Code Sections 219(g)(3)(B)(i), 219(g)(3)(B)(ii), and 219(g)(7)(A). **Note:** The applicable dollar amount for determining the deductible amount of an IRA contribution if an individual or the individual's spouse is an active participant, the applicable dollar amount under section for a married individual filing a separate return is not subject to an annual cost-of-living adjustment and remains $0. (Code section 219(g)(3)(B)).

- Therefore, under section 219(g)(2)(A), the deduction for taxpayers making contributions to a traditional IRA is phased out for single individuals and heads of household who are active participants in a qualified plan (or another retirement plan specified in section 219(g)(5)) and have adjusted gross incomes (as defined in section 219(g)(3)(A)) between $73,000 and $83,000, increased from between $68,000 and $78,000. For married couples filing jointly, if the spouse who makes the IRA contribution is an active participant, the income phase-out range is between $116,000 and $136,000, increased from between $109,000 and $129,000. For an IRA contributor who is not an active participant and is married to someone who is an active participant, the deduction is phased out if the couple's income is between $218,000 and $228,000, increased from between $204,000 and $214,000. **Note:** For a married individual filing a separate return who is an active participant, the phase-out range is not subject to an annual cost-of-living adjustment and remains $0 to $10,000.

- The adjusted gross income limitation under section 408A(c)(3)(B)(ii)(I) for determining the maximum Roth IRA contribution for married taxpayers filing a joint return or for taxpayers filing as a qualifying widow(er) is increased from $204,000 to $218,000. The adjusted gross income limitation under section 408A(c)(3)(B)(ii)(II) for all other taxpayers (other than married taxpayers filing separate returns) is increased from $129,000 to $138,000. **Note:** The applicable dollar amount for a married individual filing a separate return is not subject to an annual cost-of-living adjustment and remains $0. (Code section 408A(c)(3)(B)(ii)(III)).

- Accordingly, under section 408A(c)(3)(A), the adjusted gross income phase-out range for taxpayers making contributions to a Roth IRA is between $218,000 and $228,000 for married couples filing jointly, increased from between $204,000 and $214,000. For singles and heads of household, the income phase-out range is between $138,000 and $153,000, increased from between $129,000 and $144,000. **Note:** For a married individual filing a separate return, the phase-out range is not subject to an annual cost-of-living adjustment and remains between $0 and $10,000.
- The limitation on the aggregate amount of length of service awards accruing with respect to any year of service for any bona fide volunteer under section 457(e)(11)(B)(ii) concerning deferred compensation plans of state and local governments and tax-exempt organizations is increased from $6,500 to $7,000.
- The limitation on deferrals under Code section 457(e)(15) concerning deferred compensation plans of state and local governments and tax-exempt organizations is increased from $20,500 to $22,500.
- The limitation concerning the qualified gratuitous transfer of qualified employer securities to an employee stock ownership plan is increased from $55,000 to $60,000. (Code section 664(g)(7)).
- The compensation amount under Code section 1.61-21(f)(5)(i) of the Income Tax Regulations concerning the definition of "control employee" for fringe benefit valuation purposes is increased from $120,000 to $130,000; the compensation amount under Code section 1.61-21(f)(5)(iii) is increased from $245,000 to $265,000.
- The dollar limitation on premiums paid with respect to a qualifying longevity annuity contract under Code section 1.401(a)(9)-6, A-17(b)(2)(i) of the Income Tax Regulations is increased to $155,000 from $145,000 in 2022.
- The dollar threshold the Code utilizes to determine whether a multiemployer plan is a systematically important plan is adjusted using the cost-of-living adjustment. After taking the applicable rounding rule into account, the threshold is increased from $1,220,000,000 to $1,256,000,000. (Code sections 432(e)(9)(H)(v)(lll)(aa) and 432(e)(9)(H)(v)(lll)(bb)).

The following is a quick reference guide to key limitations for 2021-2023

	2023	2022	2021
401(k)/403(b)/457 Elective Deferral Limit	$ 22,500	$ 20,500	$ 19,500
Defined Contribution Plan Annual Contribution Limit	$ 66,000	$ 61,000	$ 58,000
Defined Benefit Plan Annual Benefit Limit	$ 265,000	$ 245,000	$ 230,000
Annual Compensation Limit	$ 330,000	$ 305,000	$ 290,000
Catch-Up Contribution Limit	$ 7,500	$ 6,500	$ 6,500
Highly Compensated Employee Compensation Threshold	$ 150,000	$ 135,000	$ 130,000
Key Employee Compensation Threshold	$ 215,000	$ 200,000	$ 185,000

FIRM NEWS

Joseph Faucher and **Brian Murray** have co-authored an article, *Indemnity and Contribution in ERISA Litigation,* which appears in the Journal of Pension Benefits (Summer 2022 Volume 29 Number 4). This article discusses the split in the several Federal Circuit Courts of Appeals regarding the availability of indemnity and contribution in ERISA litigation matters, and the practical implications of that split. To read the full article: www.truckerhuss.com/wp-content/uploads/2022/10/JPB_Summer22_Faucher.pdf

On October 27, **Mary Powell** spoke on *Providing Benefits for Abortion Services Post-Dobbs — Ways to Protect the Plan Sponsor,* at a Western Pension & Benefits Council San Francisco Chapter Webinar.

Mary has authored an article for BloombergLaw.com on *Strategies for Protecting Employers Providing Abortion Services.*

On Thursday, December 8, Mary will participate in an ALI CLE video webcast, *Health Plans Post-Dobbs: Issues, Insights, and Trends*, scheduled to broadcast live from 2:00–3:00 pm Eastern.

On November 3, at the Queen's Bench Past Presidents Dinner, **Clarissa Kang** received the Service Award for her work on the Queen's Bench Centennial Celebration at which Trucker Huss sponsored a table.

On November 11, Clarissa will be a moderator/panelist at the ABA's 16th Annual Section of Labor and Employment Law Conference in Washington, D.C. on a panel entitled, *Everything Employment Lawyers Need to Know About ERISA*.

Clarissa has been appointed to serve as a Representative on the ABA's Joint Committee on Employee Benefits from the Tort Trial and Insurance Practice Section (TIPS).

On November 11, **Sarah Kanter** will speak at the ABA's 16th Annual Labor and Employment Law Conference. The panel, entitled *Roe v. Wade Overturned: A Morass of Employment Considerations Created by Dobbs. v. Women's Health Organization*, will discuss the challenges faced by employers seeking to support their employees' efforts to secure abortion health care and related services both in and out of benefit plans.

The Trucker ✦ Huss Benefits Report is published monthly to provide our clients and friends with information on recent legal developments and other current issues in employee benefits. Back issues of Benefits Report are posted on the Trucker ✦ Huss web site (www.truckerhuss.com).

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