HOT TOPICS IN EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION

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Agenda

- Executive Compensation Trends
- One Big Beautiful Bill Act
- Health Plan Updates
  - Litigation – Tobacco Surcharges
  - Litigation - Prescription Drugs
  - Mental Health Parity
  - Gender Affirming Care
- Retirement Plan Updates
  - SECURE 2.0
  - VFCP
  - Correcting Overpayments

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Executive Compensation Trends

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Executive Compensation Trends

- Talent retention & succession planning
- Increased scrutiny on "cause" definitions
  - *E.g.*, Coldplay Incident
- Expansion of executive incentive programs and incentive plan alternatives
  - *E.g.*, discretion v. fixed goals
  - Use of DEI metrics trending down
- Enhanced executive security

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One Big Beautiful Bill Act

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One Big Beautiful Bill Act

- Health Savings Accounts (HSAs)
  - Telehealth safe harbor reinstated retroactively to 1/1/2025
  - Direct primary care (DPC) arrangements do not jeopardize HSA-eligibility

- Dependent Care FSA Limits Increased
  - $7500 for married filing jointly
  - $3750 for married filing separately

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One Big Beautiful Bill Act

- Tax Provisions
  - Extends reimbursement of student loan payments
  - No tax on tips or overtime

- Code Section 4960
  - Expansion of "Covered Employees"

Retirement Plan Updates

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SECURE 2.0 Final Regulations

- Plan amendment deadline = 12/31/2026

- Required Roth Catch-Ups
  - Employees age 50+ with prior-year FICA wages > $145,000
  - Simplification of tracking wages among controlled group
  - Clarified rules for deemed Roth elections and corrections

- Super Catch-Up:
  - Applies to employees ages 60-63

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VFCP Updates

- Updated program includes more sample documents/tools to streamline submission
- Self Correction available when:
  - Lost earnings are less than $1,000;
  - Principal and earnings remitted to plan within 180 days; and
  - Submit self-correction notice to DOL.
- Excise tax relief also updated in prohibited transaction class exemption

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Correcting Overpayments

- Inadvertent Benefit Overpayments (IBOs)
  - IRS Notice 2024-77
  - Plan generally excused from attempting to recoup IBOs or make corresponding corrective contributions
  - IBOs can be treated as an eligible rollover distribution in certain circumstances

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Correcting Overpayments (cont.)

- New rules clarify that failure to recover an IBO is not generally a qualification failure
  - Beware – other failures may occur as a result of an IBO, such as if unrecouped amount is owed to another participant
- Plan sponsor may still seek recoupment of IBO
- Additional limitations on overpayments from defined benefit pension plans

Key Action Items

- Review dependent care FSA documents
- Consider allowing first dollar telehealth coverage under HDHP
- Ensure NQTL analysis completed
- Review health plan with respect to gender affirming care
- Consult latest guidance for 401(k) plan corrections
- Ensure retirement plan complies with SECURE 2.0

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Health Plan Updates

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Litigation – Tobacco Surcharges

- Tobacco Cessation Wellness Programs
  - HIPAA nondiscrimination rules: Participatory vs. health-contingent wellness programs
  - Health-contingent program requirements
    - Reasonably designed to improve health
    - Annual opportunity to qualify
    - Incentive limit – 50% of cost of coverage
      - "Full reward" must be made available
    - Reasonable alternative standard (and notice)

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Litigation – Tobacco Surcharges (cont.)

- A dozen or so class actions filed in 2024
  - Challenging the meaning of "full reward" for those who meet an alternative standard mid-year
  - Surcharges vary ($700, $780, $800, $900, $1,300)
  - **Employers:** Full reward (no surcharge) going forward
  - **Plaintiffs:** Full reward requires reward be provided on a retroactive basis.

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Litigation – Prescription Drug Costs

- Recent wave of cases has attempted to apply the theory of liability for retirement plan excessive fee cases to health plans – specifically, arrangements with pharmacy benefit managers (PBMs).
- Sponsors should consider reviewing their prescription drug arrangements (particularly the associated costs) and documenting a prudent fiduciary process in selecting and monitoring the health plan's service providers.

Litigation – Prescription Drug Costs (cont.)

- Fiduciary breach allegations in recent cases:
  - Failure to prudently select and contract with PBM
  - Failure to monitor PBM
  - Failure to count copays against annual cost-sharing limits
  - Claim denials without proper notice

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Litigation – State PBM Laws

- Tennessee – On May 7, 2025, a US District Court rules that portion of Tennessee's PBM laws were preempted to the extent they attempted to govern self-funded ERISA plans.

- Florida – Florida passed the Prescription Drug Reform Act in May of 2023 giving them the authority to examine PBMs.
  - No formal challenges to the examination which started in 2025
  - ERISA preemption is an open question and may be subject to future litigation.

- Texas – On February 25, 2025, the Texas Attorney General issued an opinion that PBM legislation was not preempted by ERISA.
  - Texas Senate Bill proposed to reinforce
  - Texas's PBM legislation could still face similar ERISA preemption challenges.

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Mental Health Parity

- ERISA Industry Committee (ERIC) lawsuit - filed 1/17/2025
  - Challenge to September 2024 final regulations
  - Stay on enforcement granted on 5/12/2025
- DOL, HHS, and Treasury issued non-enforcement statement on 5/15/2025
- 2013 rules requiring non-quantitative treatment limitation (NQTL) analysis remain in effect

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Gender Affirming Care

- 11th Circuit rules that gender-affirming surgery exclusion was not discriminatory on its face
- More than half the states now restrict gender dysphoria treatment
- Recent proposed rules for small-group plans would prohibit insurers from treating "sex-trait modification" as an essential health benefit
- Exclusion of gender dysphoria treatment/gender affirming care may be challenging to defend

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Thank You!



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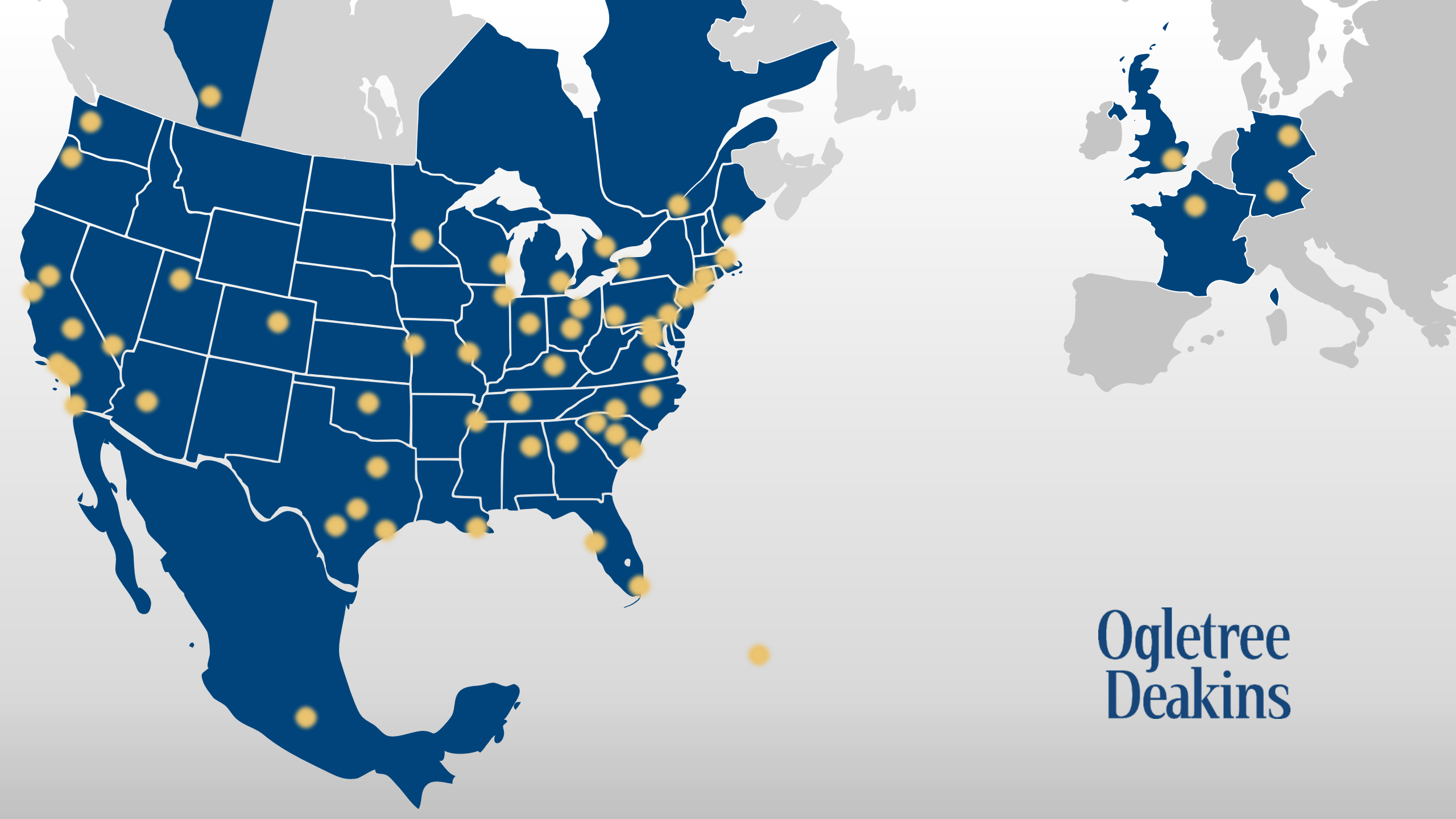
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