LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

3 DOL Policy Shifts On Benefits Attys' Radar

By **Kellie Mejdrich**

Law360 (June 27, 2025, 1:03 PM EDT) -- Since President Donald Trump's administration took over in January, the U.S. Department of Labor has changed its tack on several issues related to employee benefits.

Here are three moves that caught lawyers' attention.

Mental Health Parity Enforcement Freeze

Attorneys took note of federal agencies' announced shift on mental health parity enforcement affecting employer health plans from May, which was spurred in part by a **trade group's suit** against the government seeking to halt implementation of a new rule from September.

Employer health plans regulated by the Employee Retirement Income Security Act still must undertake a detailed comparative analysis of their nonquantitative limits on coverage for mental health and substance use disorder treatments, which Congress put in place in a 2020 law.

Those new analysis requirements were designed to further strengthen long-standing federal parity laws that restrict plans from limiting behavioral health coverage more than physical, after years of federal agencies reporting lackluster compliance with what was on the books.

But the September final rule imposed significant new requirements on plans' comparative analyses that some attorneys said were impossible to meet.

The agencies said in the **statement published May 15** that the enforcement pause would extend through a final decision in the ERISA Industry Committee's suit challenging the rule, plus an additional 18 months.

Benefits attorneys **said the statement was significant** because it also outlined plans to possibly rescind or modify the **September final rule** and more broadly reexamine how the DOL, the U.S. Department of Heath and Human Services and the U.S. Department of the Treasury enforce federal parity laws overall.

Joanne Roskey, an employer-side attorney and member of Miller & Chevalier Chtd., who formerly worked for the DOL's Employee Benefits Security Administration, said the statement was "a welcome reprieve from those obligations, for sure."

"It did relieve plans and plan service providers from a lot of work that was going on to try to fully implement those provisions," Roskey said. Roskey added that the comparative analysis on nonquantitative treatment limitations was still required by the 2020 law, although the enhanced requirements on that analysis from the September rule won't be enforced.

"People are still going through the audit process where their comparative analyses are being looked at," Roskey said.

Crypto 401(k) Warning Withdrawn

Attorneys say another significant development affecting benefits occurred May 28 when the DOL rescinded guidance from former President Joe Biden's administration that warned against cryptocurrency offerings in 401(k) plans, which had sparked a legal challenge from a 401(k) provider against the agency.

EBSA **announced the rescission** in a news release online and formalized the move later that day in its first compliance assistance release document issued for the year, Compliance Assistance Release No. 2025-01.

Benefits attorneys **had been predicting** Trump might act to roll back the guidance given his personal embrace of cryptocurrency, including through his own Trump coin that trades under the symbol $TRUMP.

The Trump administration yanked 2022 guidance from the Biden administration that had **warned ERISA plan fiduciaries** to exercise extreme care before adding a crypto fund to a retirement plan's investment menu, given the unknown investment risks. The guidance also said EBSA planned to conduct an investigative program aimed at retirement plans that offered crypto-related products.

Allie Itami, an employee benefits partner at Lathrop GPM LLP, said the crypto guidance withdrawal was a major development in the first half of the year.

Itami said the guidance "was never enforced, but it absolutely had a chilling effect" on plan sponsors' willingness to consider crypto offerings.

She said, as a result, "taking a step to actually rescind that has sort of a warming effect."

Andrew Oringer, a management-side partner and general counsel at The Wagner Law Group and a longtime ERISA attorney, also took note of the crypto enforcement shift.

"These tonal shifts are important because fiduciaries that are thinking of going in one direction or another often do not want to go in a direction where they know that the federal government is predisposed to disliking what they're doing," Oringer said.

ESG Investing Rule Replacement

Attorneys say another big change in benefits policy happened May 28 when the DOL told the Fifth Circuit it planned to replace Biden administration regulations on whether fiduciaries can consider issues like climate change and social justice when choosing retirement plan investments.

The announcement came in a **status report from the DOL** filed in a legal challenge brought by a group of Republican attorneys general seeking to invalidate the DOL's 2022 rule allowing — but not requiring — retirement fiduciaries to consider environmental, social and governance, or ESG, factors when making investment choices.

The case has been tossed twice by a Texas federal judge, **once in 2023** and once **again in February** after the initial dismissal was **overturned by the Fifth Circuit** in light of the U.S. Supreme Court's opinion in Loper Bright Enterprises v. Raimondo, which upended the Chevron doctrine of judicial deference to agencies' interpretations of ambiguous laws.

The Biden rule from 2022 had reversed a policy from Trump's first administration that was more restrictive on how retirement plans could consider ESG factors, and attorneys expect the latest shift will swing the policy pendulum back to what was in place before the 2022 rule.

Oringer of Wagner said that while the ESG move was notable, "it's not a surprise that Trump 2.0 is hostile to ESG."

"But to actually see them now ... having this on their hit list, I think, is significant," he said.

Bradford Campbell, a former chief at EBSA and a partner at Faegre Drinker Biddle & Reath LLP, highlighted the potential for a shift on the ESG rule to affect investment policy more broadly.

"People need to remember the fight over the ESG rule is ostensibly about ESG, but both the Trump and the Biden rule are actually governing the entirety of ERISA fiduciary investing. Neither regulation is just about ESG, it's actually about the test by which fiduciaries make all investment decisions," Campbell said.

Campbell added that he hopes to see changes to what the second Trump administration proposes on the ESG rule.

"What I'm looking for in the new rule is less about ESG and more about regulatory clarity in what the standards are, and how you administer them," Campbell said.

--Editing by Emma Brauer and Aaron Pelc.