

APRIL 2024

# SSG COMPLIANCE RECAP

What every HR leader should know about compliance.



In April, a ban went into effect for most non-compete clauses, and the Centers for Medicare and Medicaid Services (CMS) portal opened for RxDC reporting submissions due June 1, 2024. The Equal Employment Opportunity Commission (EEOC) released final regulations mandating how employers with 15 or more employees must handle accommodation requests for pregnancy, childbirth, or related conditions, and published its final enforcement guidance on workplace harassment. The Department of Health and Human Services (HHS) introduced legislation safeguarding protected health information (PHI) related to reproductive health care.

## Federal Trade Commission Bans Non-Compete Clauses

On April 23, 2024, the Federal Trade Commission (FTC) finalized a rule banning most employers and employees from entering into non-compete clauses, effective 120 days post-publication in the Federal Register. This move aims to eliminate these clauses across all levels of workers, with a narrow exception for senior executives' pre-existing agreements.

The rule broadly defines non-compete clauses, including any terms that prevent or penalize employees from seeking employment elsewhere after their current employment ends. It also outlaws “forfeiture-for-competition” clauses, where employees must choose between severance and working for a competitor.

Moreover, the rule mandates that employers notify all employees, except senior executives, that their non-compete clauses are no longer enforceable, providing suggested language for such notifications.

An exception remains for non-compete clauses entered into during the bona fide sale of a business, which now potentially includes certain employee scenarios.

### EMPLOYER CONSIDERATIONS

This rule marks a significant shift in U.S. employment practice, and employers are urged to reassess their compensation and retention strategies immediately.

## Portal Open for RxDC Submissions

On April 10, 2024, the Centers for Medicare and Medicaid Services (CMS) announced through its RegTap portal that the Health Insurance Oversight System (HIOS) is now open to Prescription Drug Data Collection (RxDC) submissions for 2023. Any plan sponsor submitting the RxDC report on its own must be registered with HIOS. While this is a one-time registration, the first time can take several weeks, so plan sponsors are encouraged to register early. The 2023 reference year submission is due June 1, 2024. CMS has provided several resources for navigating the registration process:

- [HIOS Access Training](#)
- [HIOS Access RxDC User Guide](#)
- [RxDC User Manual](#)

### IN THIS ISSUE

Stay one step ahead with an easy-to-understand summary of these legislation highlights.

- **Federal Trade Commission Bans Non-Compete Clauses**
- **Portal Open for RxDC Submissions**
- **Pregnant Workers Fairness Act Issued**
- **2024 Privacy Rule Amended to Strengthen Protections for Highly Sensitive PHI**
- **Harassment Prevention Guidance Released**
- **Question of the Month**

## Pregnant Workers Fairness Act Issued

On April 15, 2024, The Equal Employment Opportunity Commission (EEOC) issued final regulations for the [Pregnant Workers Fairness Act \(PWFA\)](#), effective June 18, 2024. This law mandates that employers with 15 or more employees must handle accommodation requests for pregnancy, childbirth, or related conditions as they would under the Americans with Disabilities Act (ADA).

Key aspects of the PWFA include a broad definition of “pregnancy, childbirth, or related medical conditions” that covers a wide range of situations from fertility treatments to lactation. Employers are required to provide reasonable accommodations, which might include job restructuring, flexible working hours, and modifications to the work environment, among others.

The regulations emphasize that accommodations need not be based on the severity of conditions, and employers can deny accommodations only if they pose an undue hardship, which must be carefully assessed through an interactive process.

### EMPLOYER CONSIDERATIONS

Employers should review and update their HR policies and training to ensure compliance with the PWFA, considering any additional local or state regulations.

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## 2024 Privacy Rule Amended to Strengthen Protections for Highly Sensitive PHI

On April 22, 2024, the Department of Health and Human Services (HHS) introduced [new regulations](#) under the Health Insurance Portability and Accountability Act (HIPAA) to safeguard protected health information (PHI) related to reproductive health care. This action follows concerns that PHI could be misused under new state laws following the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*. This regulatory update aims to preserve patient confidentiality and uphold individuals' rights under shifting legal landscapes in reproductive health.

Key features of these regulations include:

- **Enhanced Protection of PHI:** The new rule prevents regulated entities, like healthcare providers and health plans, from using or disclosing PHI to investigate or penalize individuals or providers related to lawful reproductive healthcare.
- **Definition of reproductive health care:** The scope covers a broad range of services, including contraception, prenatal care, pregnancy termination, and fertility treatments, among others.
- **Attestation requirement:** Regulated entities must obtain a signed attestation confirming that any request for PHI is not for the purpose of investigating or penalizing lawful reproductive health care.
- **Updated Notice of Privacy Practices (NPP):** Covered entities are required to revise their NPPs to clearly inform individuals about the use and disclosure of their PHI concerning reproductive health care, with updates to be completed by February 16, 2026.

### EMPLOYER CONSIDERATIONS

It's crucial to stay updated with HHS guidance, ensure NPPs are current, and consult legal counsel when handling PHI related to reproductive health care.

## Harassment Prevention Guidance Released

The Equal Employment Opportunity Commission (EEOC) has recently published final [enforcement guidance on workplace harassment](#). This comprehensive document updates and consolidates previous guidance from 1987 to 1999 into a unified resource that reflects changes in law and evolving workplace dynamics, including virtual environments and the influence of digital technology.

### Key highlights of the guidance:

- Protection from harassment: It reaffirms that federal laws protect employees from harassment based on race, color, religion, sex, national origin, disability, age (40 or over), or genetic information.
- Scope of harassment: Harassment can occur not only between coworkers and supervisors but also through interactions with customers, contractors, and other third parties.
- Legal and technological updates: The guidance incorporates recent legal precedents, such as the Supreme Court's decision in *Bostock v. Clayton County* and addresses new challenges like online harassment.

### EMPLOYER CONSIDERATIONS

Employers should review the [Summary of Key Provisions](#) and consider whether their employees may experience barriers to understanding the law. Employers should:

- Have a clear, easy-to-understand anti-harassment policy.
- Have a safe and effective procedure that employees can use to report harassment, including more than one option for reporting.
- Provide recurring training to all employees, including supervisors and managers, about the company's anti-harassment policy and complaint process.
- Take steps to make sure the anti-harassment policy is being followed and the complaint process is working.

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## Question of the Month

**Q: If an enrolled employee's dependent loses coverage and needs to enroll under the employee's plan, is that an opportunity to switch medical plans and carriers, or are they restricted to their current plan?**

**A:** The employee can enroll the dependent in any plan option offered by the employee's employer. This is a HIPAA special enrollment right and the right extends to any benefit plan option, even if the employee was not previously on that option.

Here is an example from the HIPAA special enrollment regulations:

**Facts.** Individual A works for Employer X. X maintains a group health plan with two benefit packages—an HMO option and an indemnity option. Self-only and family coverage are available under both options. A enrolls for self-only coverage in the HMO option. A's spouse works for Employer Y and was enrolled for self-only coverage under Y's plan at the time coverage was offered under X's plan. Then, A's spouse loses coverage under Y's plan. A requests special enrollment for A and A's spouse under the plan's indemnity option.

**Conclusion.** In this example, because A's spouse satisfies the conditions for special enrollment under paragraph (a)(2)(ii) of this section, both A and A's spouse can enroll in either benefit package under X's plan. Therefore, if A requests enrollment in accordance with the requirements of this section, the plan must allow A and A's spouse to enroll in the indemnity option.

*Answers to the Question of the Week are provided by Kutak Rock LLP. Kutak Rock provides general compliance guidance through the UBA Compliance Help Desk, which does not constitute legal advice or create an attorney-client relationship. Please consult your legal advisor for specific legal advice.*