

Employers Sued for Not Retroactively Applying Non-Tobacco Rates

October 1, 2024

PRACTICES Employee Benefits and Executive Compensation

Several employers have been sued in proposed class action lawsuits within the last month resulting from tobacco surcharges imposed under their group health plans. Among other alleged deficiencies, one common claim is that the employers did not retroactively apply non-tobacco rates once an employee completed a tobacco cessation program or other “reasonable alternative standard” under HIPAA’s nondiscrimination rules. These rules require that employees who complete a reasonable alternative standard, which is most commonly a tobacco cessation program, receive the benefit of non-tobacco rates for the entire plan year. The employers named in these suits only applied their lower non-tobacco rates on a prospective basis after the employee’s completion of a tobacco cessation program.

Employers should review their wellness program documents and associated administration to ensure that participants who complete a reasonable alternative standard earn the award, or avoid paying the surcharge, for the entire plan year.