4 Benefits Policy Issues To Watch In 2026's 2nd Half

By **Kellie Mejdrich** · Listen to article

Law360 (July 10, 2026, 6:12 PM EDT) -- The U.S. Department of Labor's work to finalize a 401(k) investment selection safe harbor and plans for a new mental health parity rule are among the top employee benefits policy issues attorneys are watching for in the latter half of 2026.

Here are four benefits policy developments that practitioners say they're watching.

401(k) Safe Harbor Finalization

The DOL is working to finalize a retirement plan investment selection rule that could expand access to different types of 401(k) offerings, including funds with investments in nontraditional assets such as cryptocurrency or private equity.

The March 30 proposed rule from the DOL's Employee Benefits Security Administration **would give legal cover** for fiduciaries of retirement plans regulated by the Employee Retirement Income Security Act against allegations that they breached fiduciary duties of prudence with regard to a given investment fund offering in their plan.

EBSA emphasized in its proposal that the investment fund safe harbor was designed to be "asset neutral" but would expand the universe of options by providing fiduciaries additional legal protections if they follow the process set out in the rule. That process includes an emphasis on six factors when considering a given investment: performance, fees, liquidity, valuation, performance benchmark and complexity.

Bradley Fay, an employer-side partner in Seward & Kissel LLP's ERISA, employee benefits and executive compensation group, said the final rule could impact which funds are added to 401(k) plans. He also pointed to **thousands of comments** that the DOL has to respond to before a final rule can be issued.

"Right now there's still a little bit of a waiting period regarding people moving into these types of assets, [and] adding these types of assets. There's clear interest both from the current administration, as well as from participants, that alternative assets become an option within these plans," Fay said.

Fay said he hopes the final rule includes broader guidance about how retirement plan managers can comply with fiduciary obligations beyond those outlined in the safe harbor.

"I think the proposed regulation had some small discussion of the fact that these were merely safe harbors and there were other methods of compliance, but I think the department should focus a little more on how those would look, with some broader statements about compliance in the final regulation," Fay said.

Ali Khawar, who headed the Employee Benefits Security Administration during President Joe Biden's administration, has signed on to comment letters critical of the proposal. He said he's hoping for changes to the final version, which could take time to execute, but he's heard the agency is moving quickly toward a final rule.

"Speed comes at the cost of quality, I think, and if they're moving too quickly, they're not going to really give the kind of sufficient weight and attention to some of the important issues that I think are embedded in the comments," Khawar said.

ERISA Prohibited Transaction Exemptions

Another regulatory issue employer and other management-side attorneys are watching involves exemptions to ERISA's strict prohibitions on many types of transactions involving benefit plans.

The DOL included amendments to prohibited transaction exemption procedures in a 2026 regulatory agenda issued earlier this month. The DOL said EBSA plans to issue a proposed rule by August that would "reduce regulatory burdens on applicants for exemptions and improve the operation of the prohibited transaction exemption program," according to the agenda.

Among the top on practitioners' wish list for changes is the Qualified Professional Asset Manager, or QPAM, exemption. Frequently sought by large investment managers that hold assets of both retirement plans and individual retirement accounts, the QPAM exemption permits a broad range of transactions that would otherwise be disallowed by ERISA's strict prohibitions on transactions between parties in interest to a retirement plan.

Jennifer Neilsson, a partner at King & Spalding LLP who advises asset managers on employee benefits compliance issues, said she's hopeful for some kind of regulatory action that addresses prohibited transaction exemptions by the end of the year.

Neilsson said she'd like to see "potentially amendments, or new class exemptions" from the DOL.

"There's been a lot of advocacy from certain trade groups about the QPAM exemption, and so my hope is that we see some revisions," Neilsson said, taking note of amendments made to QPAM **during the previous administration**.

"It's not uncommon that when you live with some revisions, that maybe there need to be some tweaks around the edges, and I'm hopeful that this Department of Labor will issue some revisions," Neilsson said.

ERISA Litigation Legislation

A bill introduced in the U.S. House of Representatives that would change how ERISA class action litigation proceeds remains an important policy issue for many attorneys, given that employers continue to face new class actions every week that allege mismanagement of both health and retirement plans.

H.R. 6084, introduced by Rep. Randy Fine, R-Fla., would automatically stay discovery in ERISA class actions until there's a ruling on a motion to dismiss, among other changes.

Earlier this year, **plaintiff-side practitioners highlighted** how the legislation's discovery stay proposal mirrors what happened with early discovery in securities class actions via the Private Securities Litigation Reform Act of 1995.

Anne Greene, an employee benefits partner at Saul Ewing LLP representing employers, said she's following the legislation closely.

"This is something to watch to see how it evolves. Whether or not this version of it succeeds, I couldn't predict, but I think that it's going to be something that continues to get brought up," Greene said.

Mental Health Parity Proposal

Attorneys are also looking for more guidance on how to comply with federal laws that require employer health plans to produce an analysis of their mental health and substance use disorder coverage, with a Biden-era rule still the subject of federal litigation.

The DOL has said in litigation over a previous rule implementing requirements under the Mental Health Parity and Addiction Equity Act that it plans to propose a replacement rule. The Biden rule further implemented federal parity laws that limit how employers can restrict coverage for mental health and substance use disorder treatments compared with physical healthcare, mainly through new written analysis and reporting requirements on plans' limitations.

Litigation against the DOL over the Biden rule **has been stayed** since May 2025, the same month the agency **stopped enforcing** the rule.

The DOL in its latest regulatory agenda said it expects a proposed rule from EBSA on compliance with the mental health parity statute to be issued by December.

Jennifer Kraft, an employer-side partner in Seyfarth Shaw LLP's employee benefits practice group, said she's watching for action on mental health parity in the latter half of 2026. She said employers putting an analysis together often struggle with getting data from third-party administrators.

"It would be nice to get some type of guidance, or have the market evolve a little bit, such that third-party administrators are helping with that piece of it a little bit more. Just because a lot of the data sits with them," Kraft said.

--Editing by Bruce Goldman and Leah Bennett.