



HAYS COMPANIES

Regulatory Freeze

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Following President Biden's inauguration on January 20, 2021, the administration announced a wide range of executive actions to establish new regulatory processes and revoke prior executive orders issued under the Trump administration.

The administration's executive actions included a [memorandum](#) released to the heads of executive departments and agencies establishing a regulatory freeze on rulemaking pending review. According to the memorandum, the incoming administration wants the opportunity to review any new or currently pending rules established under the previous administration.

One major impact is the possible delay or altering of the EEOC's proposed wellness rules for ADA and GINA compliance.

RULES ARE TO BE TREATED AS FOLLOWS:

1. Pending rules sent to the Office of the *Federal Register* (the "OFR") but not published in the *Federal Register* will be withdrawn for review and subject to approval by a department head appointed by the president.
2. For rules already published in the *Federal Register* with pending effective dates, agencies are asked to consider postponing their effective dates for 60 days from the date the presidential memorandum (January 20, 2021) was issued. If it is determined that the rules are appropriate and consistent with applicable law, agencies are asked to provide a 30-day comment period (taking place within the 60-day postponement) for interested parties. If necessary, agencies may consider extending the effective date beyond the recommended 60 days to complete the review process.
 - If the review process concludes and the rule is determined appropriate and raises no substantial questions of fact, law, or policy, then no additional action is necessary.
 - If the review process determines there are issues of fact, law, or policy, then additional actions will be taken in consultation with the Director of the Office of Management and Budget (the "OMB Director").



Subject to certain exceptions, agencies are asked not to propose or issue new rules until a department or agency head reviews and approves the rule.

The regulatory freeze will impact rules related to employee benefits and employers should consider any potential changes to effective dates. Highlighted below are several recent rules that may be affected.

HIPAA PRIVACY RULE

- HHS recently proposed changes to the HIPAA Privacy Rule aiming to establish national standards to protect individuals' personal health information (PHI). If finalized, it would become effective 60 days after publication, with covered entities having an additional 180 days following the effective date to comply.
- Because the proposed rule has been published (as of 1/21/21) and has a pending effective date, it will fall under category 2 listed above.

EEOC WELLNESS RULE

- The EEOC proposed changes to the ADA wellness rules regarding incentive limits that did not have an effective date but were given a 60-day comment period starting when the proposed rule was officially published in the *Federal Register*.
- Because the proposed rule has not been published in the *Federal Register*, it falls under category 1 above and has been withdrawn pending review.

HEALTH PLAN TRANSPARENCY REGULATIONS

- Late last year, the DOL, IRS, and CMS issued final regulations requiring plans and issuers to disclose certain cost-sharing and pricing information to participants, beneficiaries, and enrollees upon request.
- The final regulations were published in the *Federal Register* but are not yet effective. The regulations will fall under category 2 listed above.



The Hays Companies Research and Compliance team will continue to review and monitor the executive actions and will provide further updates as they become available.

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