

It Benefits You Your Employee Benefits Newsletter

February 2022

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Thank You for Being a Friend

What do Betty White and McGriff have in common? Both entered the world in 1922! One, a beloved American actress, comedian, and writer, and the other, a pillar of the insurance industry! 100 years later, we find ourselves reflecting on the core tenants of both of these icons. Betty's life was well-lived, and her legacy is a reminder to keep joy in life and bring light and laughter to all. And though our name may have changed along the way, McGriff's unwavering dedication to our clients has remained the same. After a century in the insurance industry, your McGriff team knows the golden rules of business - treat our clients as well as we would treat our closest friends, go above and beyond expectations, and always keep our focus on your employee benefits goals.



McGriff Compliance Q&A: Is Our Plan Required to Cover Employees' Spouses?

Medical coverage is expensive, and some employers try to limit the number of non-employee individuals enrolled in their group health plan in order to control costs. One of the more common ways to do this is by implementing a spousal surcharge, making it more attractive for spouses to enroll in another plan, such as one sponsored by their own employer. Fewer employers structure their plan with a spousal carve-out, which would eliminate spousal coverage in some circumstances.

While both solutions are legally permissible, there are a variety of considerations that plan sponsors should keep in mind when deciding whether to implement a spousal surcharge or carve-out. [Click here](#) to learn more about how plan sponsors can limit the number of spouses enrolled in a group health plan.

Upcoming Compliance Deadlines

February



IRS Transmittal of Forms 1094-B/1095-B & 1094-C/1095-C

An Applicable Large Employer (ALE) must file Form 1094-C, as well as the 1095-C forms sent to all full-time employees with the IRS by February 28, 2022. A self-funded employer with under 50 full-time employees will file Form 1094-B, as well as the 1095-B forms sent to employees covered under the employer-sponsored health insurance plan. (March 31 electronic filing deadline for employers filing 250 or more forms.)

March



Medicare Part D Coverage Disclosure to CMS for Calendar Year Plans

Employers whose group health plans provide prescription drug coverage must report to CMS within 60 days after the beginning of the plan year whether the benefits are creditable with respect to Medicare Part D coverage.

March



MEWA Annual M-1

Multiple employer welfare arrangements must file their Form M-1 annual report by March 1 with the DOL. This filing requirement applies to all MEWAs, including insured and self-insured arrangements.

March



IRS Forms 1095-B/1095-C Due to Individuals

A self/level-funded employer with less than 50 full-time employees must provide 1095-B individual statements to full-time employees covered under their group health plan. The IRS now allows a self-funded non-ALE employer to meet this obligation by posting a clear and conspicuous notice on its website stating that responsible individuals may receive a copy of their statement upon request. An ALE must provide 1095-C individual statements to full-time employees with specific information relating to each employee's offer of coverage for every month of 2021. This original deadline of January 31 is now permanently extended to March 2.



PCORI Fee Amount Adjusted for 2022

The Patient-Centered Outcomes Research Institute (PCORI) fee was created by the Affordable Care Act and first applied for plan years or policy years ending after September 30, 2012. The fee is imposed on health insurance issuers and self-insured plan sponsors to fund research programs.

The PCORI fee requirements now extend to plan or policy years ending before October 1, 2029. For plans ending in 2021, the next PCORI fee payment will be due August 1, 2022 (the July 31 deadline falls on a Sunday). The updated PCORI fee amount is now \$2.79 multiplied by the average number of lives covered under the plan.

If you need assistance, McGriff has tools to help you calculate your PCORI fee using the most appropriate IRS-approved method. Please reach out to your McGriff Benefits Consultant with questions about calculating, paying, and reporting your PCORI fee.

Defining Performance: Metrics Matter

A dot.com CEO recently fired 900 employees on a Zoom call. Why? In part, for low productivity while working remotely, the CEO said. Of course, there are many other theories about this rather extreme example of employee management, but it does seem to be a sign of the turbulence companies find themselves navigating right now.

Aside from the coldness of terminating employees en masse via virtual meetings, this is a good example of what happens when performance-driven companies (aren't they all?) are unable to hold their employees accountable for set standards of productivity.

There is certainly an argument to be made about the failure of this particular entity to manage their remote workers. One report alleged that the employees who were terminated were averaging only two hours of actual work per eight-hour workday. If true, where were the managers of these workers? Were they aware of the ongoing lack of diligent production? Did the managers address the low performance individually? Did they examine root causes? Since every Business 101 class will tell you that "what gets measured, gets managed", where were the statisticians and what plans for improvement were implemented before the mass termination of a third of the company's workforce?

Obviously, there are many things we simply do not know about this particular case, but it does remind all of us of the importance of **metrics** and the application of management principles to these metrics to promote a desired business outcome. We simply have to be more deliberate in crafting, measuring, and enforcing performance goals so our employees will perform at their highest level.

Since we're at the start of a new year, it's a great time to get back to some basics:

Goal Setting

- If you haven't done so already, each employee should have measurable and achievable goals. These should have been developed with employee input and communicated clearly – especially **how** the goals will be measured. These goals should also reflect the overall corporate goals so that company **mission** is top of mind for every employee.

Periodic Check-Ins

- Once goals are set and communicated, each manager should review the performance metrics on a regular basis. A version of this includes evaluating the sustainability of the goals as the year advances and speaking to each employee regarding their individual performance (both good and bad).

Recognizing Performance

- When performance goals are being met, be sure to recognize and reward employees appropriately. When performance goals are not being met, examining causes and discussing ways to improve – including additional training – is a management imperative.

Address Engagement

- Although employee engagement has been widely discussed in the past few years, it is still an important indicator of employee satisfaction. Some studies have suggested that employees who are kept informed about their performance – both positively and negatively – are more engaged overall. This is important when unemployment is low and workforce participation is near an all-time low.

Continued



No Surprises at Evaluation

- Most organizations still conduct annual performance evaluations for each employee. These are great tools to review what has happened during the previous 12 months and set new goals for the next year. It is important there be **no surprises** at evaluation time. No employee should ever be blindsided by a negative review. Ever. Effective management is predicated on addressing issues as they happen and not waiting until an employee has no chance for improvement before mentioning any shortcomings.

No Surprise Terminations

- Except for layoffs and RIFs, no employee should be surprised by a termination. Especially a termination based on poor job performance. Employees should have been given ample opportunity to improve their work performance long before termination occurs. When this level of communication is conducted properly, an employee will not be surprised when they are terminated for lack of production.

In our example above, we do not know if employees were genuinely surprised – or if they merely assumed their production was acceptable to management. Without information, employees will make up their own stories – and very often will come to believe those stories. In the world of data we find ourselves working in today, there are

no excuses for springing a poor evaluation or termination on any employee. If metrics are being gathered, metrics should be used.

And whether an employee is working onsite or remotely, the management principles are the same. Understanding how performance and success are defined is the key to effective management. Commitment to frequent and meaningful communication is the vehicle through which we build our employees' individual performances and ultimately how we create corporate success.

If our employees are truly viewed as valuable assets, we have to treat them as such. All assets need monitoring, maintenance, and care to optimize their performance. Our people are no different.

Make 2022 the year of meaningful measurement. And reap the rewards of better engagement.



Janie Warner, SHRM-SCP

McGriff HR Advisory Practice Leader

A version of this article was previously published in the January 2022 edition of HR Professionals Magazine.



Chronic Pain in the Workplace: Impacts and Solutions

February 24, 2022 | 2 p.m. EST

1.0 SHRM PDC Pending

To register, please [click here](#)

Which chronic condition affects more than 50 million adults in the USA, costs over \$600 billion a year in medical costs and lost productivity, and can lead to ongoing disability? It's not diabetes or heart disease, it's chronic pain. When pain transitions from a short-term problem to an ongoing battle, the effects can become a burden financially, mentally, and emotionally for both those afflicted and their caregivers. Join us for this webinar featuring Clinical Wellness Practice Leader Katie O'Neill and HR Advisory Practice Leader Janie Warner to learn about the causes, impacts, and potential solutions for addressing chronic pain in your workforce.



Supreme Court Issues Opinions on OSHA ETS Vaccination and Testing Mandate & CMS Health Care Worker Vaccination Mandate

OSHA ETS: “Vaccine or Test” Mandate for Private Employers with 100 or More Employees

The Occupational Safety and Health Administration’s (OSHA’s) vaccine-or-test mandate is blocked again. On January 13, the U.S. Supreme Court issued its opinion finding that applicants opposing the vaccine-or-test emergency temporary standard (ETS) were likely to succeed on the merits and granted the applications for stay of the ETS. What this means, practically speaking, is that employers do not have to comply with the ETS at this time.

On January 25, OSHA announced it is withdrawing the ETS. There is speculation that OSHA will now move forward to make the temporary directive a permanent standard.

Many employers have already communicated vaccine-or-test policies to employees, and some may choose to continue implementing them despite no longer being compelled by an agency mandate. Many may also continue to impose surcharges on unvaccinated workers or provide incentives for vaccination. Employers have wide discretion in implementing their own workplace policies, and some may continue to press forward with these workplace safety measures. But as a reminder, employers should be aware that several states, localities, and even industries have passed laws or have rules relating to COVID-19 vaccinations and related policies.

Employers should continue to monitor legal developments and consult with counsel when crafting, or revising, workplace policies.

The CMS Emergency Rule: Health Care Worker Vaccine Mandate

The Supreme Court issued an opinion on January 13 reinstating the Centers for Medicare & Medicaid Services (CMS) rule requiring vaccination of certain health care workers. This ruling will have widespread impact on Medicare- and Medicaid-certified provider and supplier types that are regulated under the Medicare health and safety standards. This includes hospitals, clinics and long-term care facilities.

The Supreme Court ruled that CMS had the authority to act to protect the health and safety of Medicare and Medicaid recipients. What this means is that healthcare entities subject to the CMS mandatory vaccination rule will need to comply or risk being terminated from the Medicare and Medicaid program. The rule allows for limited exceptions for medical and religious accommodations but does not include a weekly testing in-lieu option.

Employers covered by the CMS health care directive should note that the deadlines have been extended to allow time for compliance. Covered health care workers must have received their first COVID-19 vaccination doses by January 27 and be fully vaccinated by February 26.



Stephanie Raborn, JD
McGriff Employee Benefits Compliance Officer

McGriff's 2022 National Benefit Trends Survey is Now Live: Let Your Voice Be Heard!

We're conducting our second annual National Benefit Trends Survey, and we want to hear from you! This year, McGriff will dig deeper to learn more about the strategies organizations like yours are using to address the benefits challenges of the day.

Topics include virtual care, mental health, employee retention strategies, recruitment of new employees, employee well-being, and more! Please [click here](#) to participate today!

ThinkHR is Now Mineral!

McGriff is proud to announce that ThinkHR – a web-based resource available for our valued employee benefits clients, is now Mineral!

On January 24, your existing ThinkHR account received an upgrade to the enhanced Mineral platform. You continue to have access to an experienced team of senior-level HR experts to answer your questions on virtually every HR or compliance-related issue, an award-winning online resource center for all of your workforce issues, and a robust learning management platform with over 300 prepared courses. Your experience is now enhanced with new features like policy reviews, a customized newsfeed based on applicable state law, and a running to-do list of actionable items pursuant to changing state and federal regulations.

Join us on **FEBRUARY 15, 2022 at 2 p.m. EST** as we discuss the new exciting changes and provide a refresher of all of the existing resources available to you as a McGriff Employee Benefits client. [Click here](#) to register.



No Cost Coverage of OTC COVID-19 Tests

On January 10, the Department of Labor (DOL) released an [FAQ](#) addressing coverage of over-the-counter (OTC) diagnostic testing for COVID-19. Employer health plan sponsors are now required to provide coverage for these tests at no cost to the plan participant. While this FAQ provides some initial clarification related to the required coverage, there are still a number of open issues that will surely raise additional questions for plan sponsors.

Following are several important takeaways from the FAQs:

- Plans and issuers must begin providing coverage of OTC diagnostic tests obtained without individualized clinical assessment without imposing cost-sharing requirements by January 15, 2022, for the duration of the public emergency. (Plans and issuers are already required to provide coverage without imposing cost-sharing requirements for such tests when sought with a health care provider's order.)
- Plans and issuers are not required to provide coverage for COVID-19 tests that are for employment purposes;
- Plans and issuers may require individuals who purchase an OTC diagnostic test to submit a claim for reimbursement to the plan or issuer; although, plans and issuers are "strongly encouraged" to directly reimburse sellers without requiring individuals who purchase these tests to pay up front;

Continued

- If providing “direct coverage” (i.e. that do not require individuals to seek reimbursement post-purchase), no enforcement action will be taken for plans that arrange for direct coverage of OTC diagnostic tests and otherwise limit reimbursement for OTC COVID-19 tests from non-preferred pharmacies or other retailers to the lesser of the actual price or \$12 per test. Entities utilizing this safe harbor must establish systems that allow the plan or issuer to make payment for the test directly to the pharmacy or retailer who provides it, ensure adequate access to OTC tests, and meet all other outlined statutory criteria; and
- Plans and issuers may limit the number or frequency of OTC tests covered without cost sharing to as few as eight individual tests per 30-day period or calendar month per covered member. Plans may not impose limits on tests administered with a provider’s involvement or prescription.
- Plans and issuers may attempt to limit and address suspected fraud and abuse by taking reasonable steps, such as by requiring attestation that the test is not being used for employment purposes, is being used for the individual’s personal use, has not been (and will not be) reimbursed by another source, and is not for resale. Plans and issuers also may require documentation of proof of purchase with claims for reimbursement for the cost of an OTC diagnostic test.

Employer health plan sponsors should familiarize themselves with this guidance addressing when plans are responsible for covering OTC COVID-19 tests. Employers will also want to consult with their carriers/TPAs to establish a process for remitting claims, and to confirm whether an attestation form will be required, as well as communicate the process to employees. The Centers for Medicare & Medicaid Services has also put together its own set of [FAQs](#) for consumers with information on getting at-home OTC tests at no cost, which may provide helpful guidance as employers create their own internal communications.



Christy Showalter, JD
McGriff Employee Benefits Compliance Officer





February Webinar Opportunities

As part of McGriff's commitment to bring you information on regulatory updates, current trends, and best practices, we are excited to invite you to the following live webinars scheduled for February. We hope you can join us for one or more of these educational opportunities!

HR Update for 2022

February 2, 2022 | 3 p.m. EST

To register, please [click here](#)

Webinar | 1.0 SHRM PDC/HRCI Credit

Omicron, the OSHA ETS, FLSA minimum wage and salary thresholds, and more – in this webinar, Ogletree Deakins attorneys will provide an overview of what's ahead for HR in 2022.

To-Do List for 2022

February 10, 2022 | 12 p.m. EST

To register, please [click here](#)

Webinar | 1.0 SHRM PDC/HRCI Credit

Too much to do and not enough time – the new normal for HR. In this webinar, we will help you prioritize the top HR and benefits tasks for 2022, and let the low-value tasks go.

Know the Latest Cyber Threats & How to Protect Your Business

February 17, 2022 | 2 p.m. EST

To register, please [click here](#)

Webinar

With the growing threat of cyber-crimes, particularly the rise in social engineering tactics, ransomware attacks can cripple your organization. Avoid becoming a victim by learning how to mitigate your risk, including the use of multi-factor authentication, and educating your employees to recognize and report phishing attacks. Presented by Dustin Owens with KIVU Consulting.

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