

# It Benefits You Your Employee Benefits Newsletter

November 2021

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**“Well, one of the greatest traditions we have is the Thanksgiving Day football game. And the biggest, most important tradition of all is the kicking off of the football.” – Lucy van Pelt**

Does anyone feel like Charlie Brown trying to kick the football this time of year? Employers always have a lot to keep up with as benefits plan sponsors on the regulatory playing field. With the continuing changes as a result of the COVID-19 pandemic, the perfect kick seems to be even more of a moving target.

As Open Enrollment approaches for many of our clients, it's game time for your McGriff Benefits Team! We want to take a quick time-out to say THANK YOU to all of our clients for trusting us with your benefits plans every day and allowing us to be part of your team!



## Financial Security for Employees: Retirement Plan Topics

Retirement benefits are important for your employees and their financial wellness and security. However, the efficient use of resources with a limited budget is critical to your competitiveness within your peer group of businesses. While some pension plans are frozen, others are still open; and cash balance pension plans are the fastest growing retirement plan in the US. Join your McGriff Retirement Consulting Team to discuss how employers are managing their pension plans for cost effective solutions to recruiting, retention and compensation policies.

November 11, 2021 | 2:00 – 3:00 pm EDT | 1.0 SHRM PDC | To register, [click here](#).

## Upcoming Compliance Deadlines

December



### Summary Annual Report (SAR) Extended Deadline for Calendar Year Plans

A Summary Annual Report (SAR) summarizes a plan's Form 5500 annual report, provides a financial statement regarding the plan and informs participants of their rights to receive additional information.

While most self-insured plans are not required to file (including large, unfunded plans and plans exempt from the Form 5500 filing requirement), some ERISA plans are required to file a SAR. A SAR must be provided to participants within nine months after the end of the plan year, or two months after the due date for filing Form 5500 (with approved extension). September 30th is the normal deadline for calendar year plans, and December 15th is the deadline for employers who received a filing extension.

January



### Form W-2 Reporting Cost of Employer-Sponsored Health Coverage

Under the ACA, employers who issued 250 or more W-2s in the prior calendar year are required to provide employees with the aggregate cost of employer-sponsored group health plan coverage on employees' Forms W-2. Currently the reporting is optional for employers who file fewer than 250 W-2 forms.



## OSHA Submits Draft of COVID-19 Vaccine Mandate ETS to the OMB

Recently, the Occupational Safety and Health Administration (OSHA) announced that it submitted a draft of its emergency temporary standard (ETS) for private employers requiring mandatory COVID-19 testing or vaccination to the Office of Management and Budget (OMB).

The ETS will require all businesses with 100 or more employees to ensure their workers are either fully vaccinated or tested for COVID-19 once a week, according to the White House. The rule will also reportedly require applicable employers to provide their workers with paid time off to get vaccinated and recover from any vaccination-related side effects (e.g., chills).

This submission to the OMB for review is a standard part of the regulatory process for an ETS. Once the OMB finishes its review and the rule is published in the Federal Register, the ETS will go into effect.

It's currently unclear how long this process will take. The OMB's review process for the most recent COVID-19-related OSHA ETS lasted more than six weeks. However, this ETS could have a different timeline, as President Biden has called for an expedited process on this rule.

Many questions about the ETS remain and McGriff will continue to bring you information as it becomes available.

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## DOL Announces Final Rule on Tip Regulations

Recently, the U.S. Department of Labor (DOL) announced a final rule that will amend Fair Labor Standards Act (FLSA) regulations for tipped employees. The final rule is expected to become effective on November 23, 2021.

### Overview of the Rule

The final rule prohibits managers and supervisors from keeping any portion of an employee's tips, regardless of whether the employer takes a tip credit. New language in the FLSA regulations clarifies that managers and supervisors may only keep the tips they receive directly from customers based on the services they directly and solely provide.

The final rule also prohibits employers, managers and supervisors from receiving tips from—but not contributing tips to—an employee tip pool. However, the final rule allows employers that do not claim a tip credit (meaning they pay their tipped employees the full minimum wage rate instead of the tipped employee minimum wage rate) to impose a tip pooling arrangement that includes employees in the establishment who are not employed in an occupation in which they customarily and regularly receive tips (e.g., dishwashers, cooks).

The DOL is of the opinion that civil money penalties are “an important equalizer in the economy by helping to ensure fair competition for responsible employers.” For this reason, the final rule restores the DOL's ability to impose penalties of up to \$1,100 per violation against employers that take tips earned by employees, regardless of whether the violations were repeated or willful.

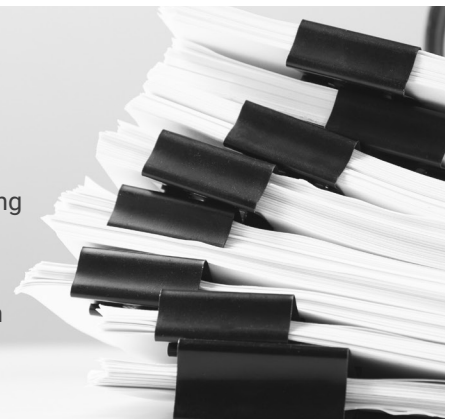
### Employer Takeaway

Employers with tipped employees should become familiar with this rule and adjust their practices to comply with this rule by its effective date.

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## Advantages of Having a Wrap Plan Document

Wrap documents are drafting devices that are often used to supplement, or “wrap around” existing benefits plan information that can help plan sponsors comply with obligations imposed by ERISA. Although not specifically required, properly drafted and distributed wrap documents help to satisfy ERISA's disclosure requirements by including required language around policies or plans, since a carrier or TPA-provided insurance policy or certificate alone will not satisfy these obligations. Wrap documents can also simplify Form 5500 filings by combining multiple benefit plans into a single ERISA plan for filing purposes. For more information about the key advantages of using a wrap document, [click here](#) to read the full McGriff Compliance Team article.



# HITTING THE WALL:

## A good place to hang on



Panic, exhaustion, grief, rage, hope, defeat, indifference—throughout the pandemic, we have experienced a collective roller coaster of emotions. Although as humans across the planet we are facing the same viral enemy, the feeling of division and isolation feels stronger than ever. For many human resource professionals, they might be feeling the additional strain of contending with their own stress, while also being tasked with keeping morale high, helping employees cope, retention, and carrying on with daily business.

While there is no one size for all or fool-proof solution for managing mental and emotional strain for all employees, resources such as employee assistance programs (EAPs), tele-mental health services, and digital programs have grown in popularity and can be valuable tools. But, what are we missing that we might be able to pull from our toolbox, both for ourselves and others? Here are some suggestions to enhance your current offerings and approach.

**INSTEAD OF:** focusing on mental health programs

**TRY:** including a focus on physical health programs as part of mental health

The mind and body connection is strong!

It is important to consider the benefits of exercise for stress, anxiety, and depression, in addition to the physical benefits. Regular exercise can be a great complement to other initiatives to help boost endorphins, take a mental break, improve overall health, and can help improve sleep.

### SUGGESTIONS

- Encourage and promote existing programs for physical activity and fitness; considering adding additional.
- Start walking groups and share ways for people to stay active during the work day, such as “move at noon” and stretching breaks.

**INSTEAD OF:** virtual happy hours

**TRY:** digital breaks

Early in the pandemic, virtual meetings proved very helpful as a way to stay connected and provide support during uncertain times. As we have adapted to our new remote environment, between our computers and smartphones, what we might actually need is a break from screen time and to connect with our environments.

### SUGGESTIONS

- Make sure remote employees know that they can log off for the day and not have emails after hours that could disrupt personal and family time.
- When cameras are not necessary for meetings, try to avoid them, and encourage “walking calls” when possible.
- Provide resources and information on the benefits of digital down time for the day to help reduce eye strain, decrease stress, and improve sleep.

**INSTEAD OF:** focusing on just talk therapy programs

**TRY:** include encouraging “flow states”

While talk therapy programs are valuable, they are not the only solution for managing emotions. Have ever experienced being “in the zone” or what is also known as a “flow state”? This is the feeling you get when you are completely immersed in something that is enjoyable, but it is challenging enough to keep your brain engaged. When you are in this flow state, hours can go by where you are avoiding any intrusive thoughts or anxieties, and you often walk away feeling uplifted and less stressed. There are many different avenues to finding your flow state—hiking, playing music, crafts and artwork, dancing, walking, reading—anything that keeps your brain busy and feels rewarding.

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## SUGGESTIONS

- Evaluate employee work/life balance to make sure employees have enough time for creative and active pursuits.
- Encourage employees to work on their hobbies and provide suggestions for at-home creative and healthy activities, such as online yoga classes, crafting kits, and reading.
- Ask employees to volunteer what they love about some of their favorite hobbies and include it in internal newsletters, which may inspire others and build more connection and common ground. Stick to hobbies that won't invoke any controversy and offer general appeal.
- Include artistic, active, and creative gift cards and giveaways with contest giveaways and company events, such as painting classes and museum passes.

**INSTEAD OF:** normalizing working during PTO

**TRY:** encouraging complete unplug time

We are all guilty of sneaking a peek at our email or working on projects while we are technically on PTO. Whether it is for peace of mind, or to avoid an avalanche when you return to the office, the underlying feeling that things need to be managed constantly prevents disconnecting from work, which can contribute to burn out. Even by answering emails on PTO, we are possibly signaling to other employees that we expect them to do the same.

Burn out is more likely to happen under on-going stress, and can come on insidiously. Your top performers might be even more vulnerable to hitting the mental and emotional wall. Although it can be tough to spot the signs, they

include feeling completely mentally and emotionally depleted, irritable, disconnected, and experiencing a lack of enjoyment in life in general. In the workplace, it can show up as negative impacts on productivity and performance, along with feelings of lacking purpose, a decreased sense of accomplishment, and feeling disconnected to the value of work.

## SUGGESTIONS

- Try to ensure there is adequate coverage and planning in place so that employees do not have a fear of taking time off.
- Lead by example—try to avoid answering emails while away, and encourage employees to do the same when on vacation.
- Be sure to recognize and highlight employee accomplishments to help them see the value of their contributions and stay motivated in difficult times.

While these are just a few suggestions on ways to adapt to the changing mental and workplace demands of the on-going situation, it is important to also apply these ideas to yourself. Staying motivated, optimistic, and productive under long periods of stress is difficult for everyone, and being responsible for encouraging that in others can sometimes feel like pulling from an empty well. Be sure to extend the same compassion and understanding to yourself as you would with others, that there will be both good days and bad, and know that sometimes hitting the wall is a good place to stop and take a rest.

**Katie O'Neill, DC, BS**

McGriff Clinical Wellness  
Practice Leader



# Four Misunderstood Terms in the Americans with Disabilities Act



The Americans with Disabilities Act (ADA) applies to employers with 15 or more employees. Despite its broad coverage, there's a lot of confusion about what the law requires and what its terms entail. A big reason for this confusion is the language of the law itself; the ADA speaks of nebulous concepts like undue hardship and reasonable accommodation. Words like *undue* and *reasonable* are by their nature open to some interpretation, which is not exactly a comfort to employers.

Fortunately, employers can feel confident in their application of the law by reviewing and understanding its most important concepts. In this article, we're going to define and analyze the terms *disability*, *undue hardship*, *reasonable accommodation*, and *interactive process*. These are the big four terms that serve as the foundation of your responsibilities as an employer under the ADA.

## Disability

Let's start with the term *disability*.

Under the ADA, a person with a disability is someone who:

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such an impairment; or
- Is regarded as having such an impairment.

Major life activities include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. A major life activity also includes the operation of a major bodily function, such as digestive, circulatory, and reproductive functions.

Although determining whether an impairment meets the definition of disability is an individualized assessment, some conditions "virtually always qualify." For example, according to the EEOC, deafness substantially limits hearing; HIV substantially limits immune function; and bipolar disorder substantially limits brain function. Other conditions may vary from case to case in whether they substantially limit a major life activity.

It's important to note that the definition of disability is broad. After the ADA was originally passed, the courts interpreted the definition very narrowly, and Congress responded by amending the ADA in 2008 so that more disabilities are covered. If an employee asks for an accommodation because of a physical or mental condition, it often won't be hard for them to show that the condition substantially limits a major life activity.

## Reasonable Accommodation

Employers often encounter the ADA when an applicant or employee asks for a *reasonable accommodation*. A reasonable accommodation is a change to the workplace or the job application process so that people with disabilities can perform the essential functions of their job, access employment benefits, or be considered for a job they're qualified for. The intent of reasonable accommodations is to remove workplace barriers for people with disabilities—barriers that don't prevent people without disabilities from performing the work or applying for the job. But don't focus too much on the word *reasonable*; in the context of disability accommodations, *reasonable* means feasible or plausible.

Common types of accommodations include modifying work schedules, altering the way job duties are done, re-assigning a non-essential job duty (like asking the receptionist to stack the monthly 100-lb paper delivery in the storage room), granting additional breaks, providing accessible parking, and providing materials in alternative formats (e.g., Braille, large print). Another type of accommodation is a temporary leave of absence. Although a bit counterintuitive (because the employee isn't working while on leave), the theory with a leave as an accommodation is that the time off

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will enable to employee to perform the essential functions of their job when they return.

Not every requested accommodation is required, however. For one, employers don't have to remove an essential job function (e.g., the receptionist can still be expected to answer the phone). Employers also aren't required to provide items for personal use, like wheelchairs or hearing aids. And, as we turn to next, an accommodation doesn't have to be provided if it causes an undue hardship.

### Undue Hardship

Under the ADA, an employer is not required to provide reasonable accommodations to employees or applicants with disabilities if doing so creates an undue hardship on the organization. The basic definition of *undue hardship* is an action that creates a significant difficulty or expense. Generally, this is a high standard to meet.

The cost of an accommodation could be an undue hardship on the employer, but so could an accommodation's duration or disruption. An accommodation that would fundamentally alter the nature or operation of the business would be an undue hardship even if the cost was negligible. But if cost alone is the basis for claiming undue hardship, employers should remember that the standard is a significant expense.



Undue hardship is determined on a case-by-case basis, considering the following factors:

- The nature and net cost of the accommodation, including the availability of tax credits and deductions, as well as outside funding;
- The overall financial resources of the facility providing the accommodation, the number of employees at the facility, and the effect of the accommodation on expenses and resources;
- The employer's overall financial resources, size, number of employees, and the number, type, and location of its facilities;
- The type of operation of the employer, including the composition, structure, and functions of the workforce, and the geographic separateness and administrative or fiscal relationship of the facility providing the accommodation; and
- The impact of the accommodation on the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

An employer can't claim undue hardship based on employee or customer fears or prejudices toward the disability. An undue hardship also can't be based on the possibility that an accommodation could reduce employee morale.

### Interactive Process

The *interactive process* is an ongoing conversation between the employer and employee to explore potential accommodations so that the employee can perform their essential job functions or access the benefits or privileges of their job.

Basically, the interactive process starts with brainstorming. The employee—and in some cases their medical provider—is often the best source for accommodation options. However, the employer should do some research too, for example, by searching for the disability or functional limitation on the Job Accommodation Network [website](#).

Next, the employer chooses an accommodation from all the options. Employers should give consideration to which accommodation the employee prefers, but, at bottom, whatever accommodation they choose must be *effective*. If it's not clear initially, the employer can implement an accommodation for a trial period to determine whether it's effective. If that accommodation doesn't work, employers should then try a different accommodation. In addition, circumstances may change over time, so the best practice is to keep an open dialogue with the employee to see if further adjustments are needed throughout the employment relationship.

This article was published on October 12, 2021 by our strategic partners at ThinkHR (authored by Megan Lemire) and reprinted with permission.



## November 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 November. We hope you can join us for one or more of these educational opportunities!

### Manufacturing During a Labor Shortage

**November 3, 2021 | 12:00 – 1:00 pm EDT**

To register, please [click here](#).

Webinar | SHRM/HRCI Credit Pending

**November 17, 2021 | 3:00 – 4:00 pm EDT**

To register, please [click here](#).

Webinar | SHRM/HRCI Credit Pending

Join the attorneys from Ogletree Deakins law firm to discuss the recent results of a survey of manufacturers on innovative ways they are attracting employees during the current labor shortage. Note - these ideas are not just for manufacturers ... employers in all industries can benchmark and receive some key takeaways on recruiting in a tough market.

### Financial Security for Employees: Retirement Plan Topics

**November 11, 2021 | 2:00 – 3:00 pm EDT**

To register, please [click here](#).

Webinar | SHRM Credit Pending

Retirement benefits are important for your employees and their financial wellness and security. However, the efficient use of resources with a limited budget is critical to your competitiveness within your peer group of businesses. While some pension plans are frozen, others are still open; and cash balance pension plans are the fastest growing retirement plan in the US. Join your McGriff Retirement Consulting Team to discuss how employers are managing their pension plans for cost effective solutions to recruiting, retention and compensation policies.



### McGriff Presents ... ThinkHR (now Mineral)!

**November 16, 2021 | 2:00 – 3:00 pm EDT**

To register, please [click here](#).

ThinkHR has changed its name to Mineral ... but the valuable resources offered haven't changed (and will even be enhanced in the coming months!). Please join us for a brief overview of ThinkHR/Mineral and its benefits available to McGriff's Employee Benefit clients. People risk is inevitable for an organization, and reducing it is no small feat given the array of potential risks, ever-changing legislation and the need for high impact expertise in the moment. We are excited to bring you ThinkHR/Mineral – a robust resource that provides an end-to-end People Risk Management solution, including live HR advisors; a reliable library of sample forms, policies and white papers; and interactive technology solutions, such as a living handbook builder and an online learning management system with 300+ training courses! If you are involved in HR compliance or employee issues at any level, this will be another valuable benefit from your trusted McGriff team that can save you time and money.

### We're All Guilty: Reducing Distracted Driving Requires a Multi-Faceted Approach

**November 18, 2021 | 2:00 – 3:00 pm EDT**

To register, please [click here](#).

The National Safety Council says that over 4,000 deaths and 276,000 injuries can be eliminated every year with a multi-faceted approach for reducing distracted driving. Join Jim Moorhead, Senior Risk Control Consultant with McGriff, who will cover the leadership vision, programs and behaviors required for implementing a proactive strategy - one in which drivers choose to be safe instead of distracted.

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