It Benefits You

Your Employee Benefits Newsletter

December 2021

In This Issue:

Happy Holidays from McGriff!

To say this year has been unprecedented would be to forget last year! The pandemic, legislative changes, subsidies, hiring and retention challenges, supply chains, vaccines, mandates, court challenges … the list goes on and gets longer every day. For most of us, Open Enrollment is coming to a close. We will have a short break to step back, relax, recover, and reflect on the past year, but soon it will be time to get organized and focus on the future. A meaningful benefits strategy is essential in recruiting, retaining and caring for your employees. McGriff is here to help you accomplish those goals by providing guidance, expertise, and solutions that help you navigate these continued challenges in our new normal.

As we are just getting up from the Thanksgiving table, we want to reiterate how thankful we are for our relationship with each and every one of you. In whatever way you celebrate, we wish you the warmest and happiest of holidays. And we look forward to seeing you in the new year!

Brian Patterson
McGriff National Director of Employee Benefit Solutions

Upcoming Compliance Deadlines

December 15

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. 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 30 is the normal deadline for calendar year plans, and December 15 is the deadline for employers who received a filing extension. **Exemptions may apply for many self-funded plans.*

January 1

Determine Applicable Large Employer (ALE) Status for 2022

Whether an employer is an ALE is determined each calendar year, and generally depends upon the average size of an employer's workforce during the prior year. If an employer has at least 50 full-time employees (including full-time equivalents and accounting for employees in controlled groups), on average during 2021, the employer will be considered an ALE for the 2022 calendar year. An ALE is subject to the Employer Shared Responsibility Mandate created by the Affordable Care Act (ACA).

Any employer determined to be an ALE in 2021 will have to comply with Internal Revenue Code (IRC) Section 6056 and provide 1095-C individual statements to full-time employees by January 31. However, the IRS recently released a proposed rule that would permanently extend this deadline by 30 days. An ALE must file the Forms 1095-C, along with Form 1094-C, to the IRS by February 28 (March 31, 2022 is the electronic filing deadline for employers filing 250 or more forms).

January 31

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.

It's Beginning to Look A Lot Like … ACA Reporting Season! *Bah Humbug!*

The holidays are fast approaching and the New Year is right around the corner, bringing not only tidings of cheer and joy but also end of year tax reporting! For many employers this includes annual Affordable Care Act (ACA) reporting under Internal Revenue Code (IRC) Sections 6055 and 6056. *Bah Humbug!* As anyone who has completed a Form 1095-C knows, the coding on these tax forms can be complicated, but accurate and timely reporting on the 2021 forms is more important than ever. Not only has the IRS continued to hand out lumps of coal in the form of expensive "Pay or Play" penalties, often due to coding errors, but several changes in 2021 should have employers carefully reviewing these forms and checking them twice!

2021 will have us singing *Auld Lang Syne* and saying farewell to:

- **Good-faith Relief:** For prior filings, the IRS has extended ACA penalty relief to employers who provided incorrect/incomplete information but who could show they made good-faith efforts to comply with the reporting requirements. However, the IRS announced that 2020 was the last extension of this good-faith relief, making it even more important to ensure that all information reported – from names and social security numbers to offer and cost of coverage codes – are correct.

- **Leniency for Late Filings:** The IRS recently released a proposed rule that would permanently extend the deadline to furnish statements to employees. However, until the rule is finalized, employers should take steps to ensure they are prepared to comply with the January 31, 2022 deadline for furnishing Form 1095-B/1095-C, as appropriate, to employees and the February 28, 2022 deadline for filing forms with the IRS (March 31, 2022 for electronic filing). Timely reporting is critical as the IRS has actively assessed penalties for late furnishing and filing; these penalties under IRC Sections 6721 and 6722 can range from $50 to $570 per form in 2021.

In addition, the American Rescue Plan Act of 2021 expanded eligibility for federal subsidies for health insurance coverage purchased through ACA exchanges, potentially increasing the risk of ACA penalties for employers who fail to offer affordable, minimum value coverage to all of their full-time employees.

Your McGriff Compliance Team is here to help keep your holidays merry and bright! Register below to join us for an ACA Reporting Update to review tips on avoiding common ACA reporting mistakes that can trigger un-festive penalties. During this webinar, we'll take at the above changes for 2021 reporting, as well as:

- Fundamentals of ACA Reporting, including deadlines, coding, updates to 2021 forms and state requirements;

- Examples of common scenarios for coding Form 1095-C, whether you are creating your own forms or reviewing vendor-prepared forms; and

- Understanding, avoiding and responding to IRS penalty letters.

It's Beginning to Look A Lot Like … Bah Humbug!
2021 ACA Reporting Update

December 14, 2021 | 2:00 – 3:30 pm EST | 1.0 SHRM PDC
To register, please **click here**.

Laura K. Clayman , JD, SHRM-CP
McGriff Employee Benefits Compliance Officer

Christy Showalter, JD
McGriff Employee Benefits Compliance Officer

Don't Forget State Individual Mandates and Reporting Requirements!

If you have employees residing in California, Massachusetts, New Jersey, Rhode Island or the District of Columbia, take note … while Congress repealed the IRS penalties associated with the Affordable Care Act's (ACA's) individual mandate effective January 1, 2019, a growing number of states have passed their own versions of this mandate, requiring residents to maintain qualifying health coverage or face a state tax penalty. What this means for employers is that outside of any federal reporting obligations you may have under the ACA, you may have additional state reporting requirements:

Jurisdiction		Distribution to Employees	Reporting to the State
California	What:	Federal 1095-B or 1095-C	Federal 1094/1095-B or 1094/1095-C
	When:	January 31, 2022	March 31, 2022 (no penalty through May 31, 2022)
Massachusetts	What:	N/A	Health Insurance Responsibility Disclosure
	When:	N/A	December 15, 2021
	What:	Form MA 1099-HC	Form MA 1099-HC
	When:	January 31, 2022	January 31, 2022
New Jersey	What:	Federal 1095-B or 1095-C or State NJ-1095	Federal 1095-B or 1095-C or State NJ-1095
	When:	January 31, 2022	March 31, 2022
Rhode Island FAQs	What:	Federal 1095-B or 1095-C	Federal 1095-B or 1095-C or State File
	When:	January 31, 2022	January 31, 2022
Vermont		Individual Mandate but currently no employer reporting requirement	
District of Columbia	What:	Federal 1095-B or 1095-C	Federal 1094/1095-B or 1094/1095-C
	When:	March 2, 2022	May 2, 2022

Employers should proactively assess whether they have employees residing in a state with an individual mandate and carefully review whether they have state-specific obligations. For fully-insured plans, the health coverage provider (insurer) will often complete this reporting on behalf of the employer. However, since it is ultimately the responsibility of the employer to ensure compliance, it is important to confirm the state's specific requirements and the insurer's role well in advance of the filing deadlines. Self-funded employers are responsible for their own state reporting. As more states follow suit in enacting state individual mandates, employers should continue to be alert for additional guidance.

Christy Showalter
McGriff Employee Benefits Compliance Officer

McGriff's 2022 National Benefit Trends Survey – coming soon!

McGriff is planning 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. Some topics include: Virtual care, mental health, employee retention strategies, recruitment of new employees, employee well-being, and more! Be sure to mark your calendars for the third week of January 2022 and be on the lookout for an invitation from our national survey team to participate!

Click **here** to access the results of the 2021 survey.

Let's Get Digital: Communicating Your Benefits in a Virtual World

While we continue to navigate the complexities of COVID-19, supply chain issues, delayed postal times, and environmental stewardship, the path for communications is becoming clear: employers need to embrace a digital approach. Employees need to hear important guidance and direction from leadership as well as how to access company resources and benefit information. But what if your workers are off-site or not connected to your company network? This requires companies to consider new ways to communicate with employees. Here are a few examples of popular communication solutions that may help you continue to inform and engage your workforce while leveraging digital methods.

Why Move to Digital?

Although printed materials allow you to put something physical in the hands of your employees, where do your benefit guides go after an employee makes their decisions and enrolls in benefits? More often than not they get stuffed in a junk drawer or tossed in the recycling bin.

Shorter attention spans have led to a desire for instant gratification. This has created new expectations. With digital communication methods you can break information down into bite-sized chunks, provide quick blurbs, then link to full details.

Change happens quickly –when you utilize digital methods to communicate you can often make updates or changes to your message in just a snap of your fingers vs. re-printing and distributing materials. And, digital methods tend to be much more engaging.

Telephonic Resources

Services that allow for mass “voicemail drops” let employees hear the human element and tone of voice from your leadership. In a time where many people want to hear directly from their leaders, this may be a good option for quick updates and morale-boosting messages. Mass texting is another very effective tool when sending simple, yet targeted messages. Some vendors provide both services in one platform.

Web Pages or Portals

While many companies have added public pages to their websites outlining their current COVID-19 or supply chain response, those with non-desk employees may consider adding a private page that workers can access and check for company updates, announcements, policies, procedures, and important benefit plan access.

Organizations with HRIS or benefit administration portals may leverage their web platform if the system allows for customization.

Encourage the Opt-In

You may encourage those who do not have company-provided email access to opt-in to sharing their personal email addresses for company-related communication. Speaking of opting in, you may also want to consider employee opt-in to text messaging from your HR department. Text messages are great for quick bursts of information, simple reminders, explainer videos, or links to resources pages. QR codes are a great way to both provide information and collect opt-in responses.

There's an App for That!

Consider utilizing an app or service that can replace email or print altogether while providing a forum for conversations. Some mobile services combine communication abilities with additional operational resources such as scheduling; hosting of handbooks, policies and other files; internet links and more, right from a smartphone.

Printed or Mailed Materials

If you are dead set on providing printed communications, take both production time and cost into account. The supply chain issues have had an impact on paper availability and other equipment/tools required to maintain print operations. Supply and demand can impact project cost and timeline.

Neither snow nor rain nor heat nor COVID-19 can hamper the U.S. Postal Service. However, their recently announced increase in standard delivery times can slow your timeline. Take this into consideration when structuring your communication plan.

You Can Do This!

Regardless of delivery method, keep the following in mind while crafting your message.

- **Do keep it concise. Information fatigue happens and happens fast.** If you have a lot of information to relay, consider breaking it into separate topics, or condense information to the most important touch points then point to where full details can be found.
- **Don't underestimate your employees' technical capabilities.** People in all age groups have adopted technology in their lives. With online banking, video calling, various streaming services for entertainment, people are embracing technology now more than ever.
- **Don't pigeon-hole your own digital capabilities.** Adopting something new will always have a learning curve. Our ancestors may have paved the way with telegraph and telephones - but remember you once logged in, or maybe dialed in, to the internet for the first time in your life. At some point sending an email or text message was a new concept. You can do this!

Moving to digital allows you to get creative with both delivery methods and messaging. Taking an interactive and encouraging approach may help not just get your message across but may also brighten your audience's day.

Christina Biddle
McGriff Marketing Communications

Metrics that Matter: Closing the Loop on Wellness Programs

We previously shared how some of the most powerful testaments to a wellness program emerge from comparing program participants with non-participants on factors such as health risk and medical system utilization. Click **here** to read our October article.

In this article, using metrics like hospital admissions, emergency room (ER) visits, and office visits, we'll look specifically at medical system utilization.

From a preventive health perspective, hospital admissions and ER visits generally indicate health situations that have deteriorated to the point of needing closer and/or immediate, or more frequent, medical attention. Granted, some people visit the ER in lieu of seeing their primary care doctor, either because they don't have one or don't know the best care pathway for their concern. Lastly, office visits most often take place when people have routine examinations to address gaps in care (annual well check, flu shots, etc.) and to check on issues before they require an ER visit or admission.

In general, we can infer that a population that tends to rely more on ER visits and admissions is less healthy. This population is also using more expensive medical services, thereby increasing medical claims.

Interestingly, Peak Health has found that program participants have fewer hospital admissions and ER visits than their non-participating (but still medically enrolled) colleagues. Furthermore, participants have more office visits. This holds true even when the data is normalized to compare across 1,000 participants. The chart below shows examples from three different clients.

	Avg Age	Admits / 1,000	ER Visits / 1,000	Office Visits / 1,000
CLIENT 1				
Non-Participants	45.0	63	237	3,917
Participants	46.1	38	147	4,224
CLIENT 2				
Non-Participants	46.0	158	292	3,576
Participants	46.0	26	90	3,755
CLIENT 3				
Non-Participants	33.9	53	168	2,909
Participants	32.0	39	116	3,416

The data above tells a good story for the Peak Health program. We can infer that program participants need fewer admissions and make fewer trips to the ER – because they're healthier or because they know that the ER is not the best care pathway for their health concern.

We can also infer that the comparatively larger number of office visits for participants can be attributed to healthier behaviors, such as completing gaps in care or seeking preventive care. Because the one commonality here is a wellness program with nurse coaches who encourage participants to engage in healthier behaviors and decisions, we can be fairly certain that the program is the differentiating factor in medical system utilization.

When the medical resource utilization is much better for participants than non-participants, employers would be wise to encourage employee participation in the program.

If you are interested in learning more about how to measure the impact of your wellness programs, McGriff's Peak Health team would be happy to share additional insights with you.

Nirav Desai

Senior Vice President and Managing Director
McGriff Peak Health

COVID-19 Pause Button – Outbreak Period FAQ

Important Reminder: Certain ERISA, COBRA and HIPAA deadlines continue to be extended during the Outbreak Period

Q: On November 15, 2021, Suzy, an employee of Acme, Inc., informed HR that her spouse lost group health coverage under the spouse's plan on June 1, 2021, as a result of termination of employment. The employee wants to add coverage for the spouse under the Acme group health plan. Should Acme enroll Suzy's spouse in coverage?

A: Yes. As a result of the spouse's loss of coverage, Suzy is entitled to a HIPAA Special Enrollment Period to add her spouse to the Acme group health plan. While Suzy's deadline to notify the plan of the loss of coverage is subject to plan design, most plans require notice of HIPAA special enrollment events from the employee within 30 days (60 days for loss of Medicaid). Under that standard timeframe, Suzy's notice would not be timely, and the plan would generally not permit enrollment.

However, as a result of the joint agency **Notice of Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID–19 Outbreak** and Emergency Notices **2020-01** and **2021-01**, the deadline to notify a plan of a HIPAA special enrollment event is extended during the COVID-19 Outbreak Period for a maximum of 1 year. Therefore, Suzy's deadline to notify the plan is the earlier of (1) 30 days after the end of the Outbreak Period; or (2) 1 year + 30 days after the HIPAA special enrollment event date. Because the Outbreak Period has not ended and 1 year + 30 days has not passed since the qualifying event, Suzy's notice is timely, and ACME should enroll her spouse in the plan.

In addition to HIPAA Special Election Periods, the agency notices continue to extend the following:

- ERISA claims and appeals deadlines
- COBRA election, premium payment, and notice of qualifying event or disability deadlines

The Outbreak Period began on March 1, 2020, and we still do not know when the Outbreak Period will end – likely 60 days after the end of the COVID-19 National Emergency Declaration. It is important to remember these deadlines continue to be extended, and not to deny claims or enrollment without first considering the extensions.

These deadline extensions can be confusing when applied to COBRA, which has subsequent, periodic deadlines for premium payments. Initially, there was a question whether the extensions for each deadline run concurrently or consecutively. In **Notice 2021-58**, the IRS confirmed the COBRA deadline extensions run concurrently (i.e., the employee cannot wait 1 year to make a COBRA election and then wait an additional year to make the initial premium payment). In addition, the IRS clarified the deadline extensions do not apply to deadlines to elect the ARP COBRA subsidy. Along with these clarifications, the IRS provided some complicated transition relief and 10 complex examples on the interaction between COBRA, the ARP COBRA subsidy, and the deadline extensions.

The key takeaway for plan sponsors is to be aware these deadlines continue to be extended. Please do not hesitate to reach out to your McGriff Account Team if you have questions about specific fact scenarios.

Chris Macali, JD
McGriff Employee Benefits Compliance Officer

Health FSA Limit will Increase for 2022

The Affordable Care Act (ACA) imposes a dollar limit on employees' salary reduction contributions to health flexible spending accounts (FSAs) offered under cafeteria plans. This dollar limit is indexed for cost-of-living adjustments and may be increased each year.

On Nov. 10, 2021, the IRS released Revenue Procedure 2021-45 (Rev. Proc. 21-45), which announced that the health FSA dollar limit on employee salary reduction contributions will increase to $2,850 for taxable years beginning in 2022. This is a $100 increase from the 2021 health FSA limit of $2,750. Rev. Proc. 21-45 also increases the carryover limit for a health FSA to $570. It also includes annual inflation-adjusted numbers for 2022 for a number of other tax provisions.

Employers should ensure that their health FSAs will not allow employees to make pre-tax contributions in excess of $2,850 for the 2022 plan year and communicate the 2022 limit to their employees as part of the open enrollment process.

Employer Limits

An employer may continue to impose its own dollar limit on employees' salary reduction contributions to health FSAs, as long as the employer's limit does not exceed the ACA's maximum limit in effect for the plan year. For example, an employer may decide to limit employee health FSA contributions for the 2022 plan year to $2,500.

Per Employee Limit

The health FSA limit applies on an employee-by-employee basis. Each employee may only elect up to $2,850 in salary reductions in 2022, regardless of whether he or she also has family members who benefit from the funds in that FSA. However, each family member who is eligible to participate in his or her own health FSA will have a separate limit. For example, a husband and wife who have their own health FSAs can both make salary reductions of up to $2,850 per year, subject to any lower employer limits.

McGriff Compliance Q&A: Classing Out Executive Benefits

We often see employers presenting benefits strategies that involve treating classes of employees differently. While the general rule is that plan sponsors may vary benefits, contributions, and eligibility criteria based on bona fide business classifications, there are some compliance considerations for employers to keep in mind.

Self-insured health plans must comply with Section 105(h) nondiscrimination rules, while fully-insured health plans have been operating under the IRS non-enforcement policy for many years. Regardless of funding status, plans that allow employees to pay benefits premium on a pre-tax basis must follow IRS Section 125 cafeteria plan rules. Finally, both self-insured and fully-insured plans must comply with HIPPA nondiscrimination rules, which prohibit discriminating against individuals based on health factors.

Click **here** to read more about how employers can class out executive benefits and still remain compliant under all of the above rules.

December 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 webinars in December. We hope you can join us for one or more of these educational opportunities!

FMLA for Supervisors

December 1, 2021 | 12:00 – 1:00 pm EST
To register, please **click here**.

This is a special webinar to train your supervisors on the Family Medical Leave Act (FMLA). Attorneys from the Ogletree Deakins law firm will equip them with knowledge on how to recognize requests for FMLA leave, what questions they can and cannot ask employees about absences, and how to avoid FMLA retaliation claims.

Welfare Compliance 101 – Reporting & Disclosure Requirements

December 9, 2021 | 3:00 – 4:00 pm EST
To register, please **click here**.

As a plan sponsor of employee benefit plans, you are subject to numerous federal regulations, from the ACA, ADA and COBRA to ERISA, GINA and HIPAA, just to name a few. Join our friends at Ogletree Deakins law firm to walk through the document, notice, distribution, and reporting obligations you have as an employer for your welfare benefit plans. McGriff will provide you with an at-a-glance compliance chart, so you are sure not to miss any of these obligations and deadlines for your company's plans.