It Benefits You
Your Employee Benefits Newsletter

June 2023

In This Issue:

Let's Get Digital: Embracing Technology With Your Benefits Communications

The world has changed, and the way we communicate has evolved. As all generations embrace technology differently, is it time to take a different approach with your benefits communications?

Click here to view digital communication considerations and ideas to improve employee engagement.

McGriff Employee Benefits Road Trip to Compliance

Your Regular Pit Stop for Employee Benefits Hot Topics

With more and more compliance hazards appearing at every turn, adhering to the rules of the road has never been so important for employee benefit plan sponsors. Join attorneys from the McGriff Employee Benefits Compliance Team as we help you tune up your employee benefits plans to ensure you have a safe and compliant journey through your plan year! This is a recurring webinar that will cover common compliance wrong turns and potential risk potholes. This session will address upcoming compliance deadlines – including Form 5500 filings and PCORI fees – and other hot topics in employee benefits, such as the end of the Outbreak Period, MHPAEA compliance, new Gag Clause requirements, and much more!

Thursday, June 15 | 2:00 pm EDT

1.0 PDC SHRM/HRCI

REGISTER HERE

Presented by:

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

Christy Showalter, JD
McGriff Senior Employee Benefits Compliance Officer

Upcoming Compliance Deadlines

July 10

Outbreak Period Ends

The National Emergency ended in April and the associated Outbreak Period, which tolled certain participant deadlines, will end on July 10. As part of the response to COVID-19, there was a tolling (i.e., pausing) of timeframes during the Outbreak Period. Specifically, the rules tolled participant deadlines related to:

1. Claims and appeals procedures for ERISA plans, including medical, dental, vision, HRA and health FSA plans;
2. COBRA elections, premium payments and notices of qualifying events or disability; and
3. Employee notices of HIPAA special enrollment events.

Nearly one year after the Outbreak Period began, regulators issued Disaster Relief Notice 2021-01 that clarified the Outbreak Period would be effective beyond one year, but any individual deadline could not be tolled for more than one year. As a result, since March 1, 2020, the deadlines described above have been tolled for one year in every case.

After July 10, the clock will begin to run for deadlines that have not already been extended for one year.

Click here for the full McGriff Compliance Q&A setting out examples for each of these deadline extensions.

July 31

PCORI Fee Deadline

If an employer sponsors a self-insured health plan, including a level-funded plan or an employer-sponsored HRA, the ACA requires the employer to submit the annual Participant-Centered Outcomes Research Institute (PCORI) Trust Fund Fee. Plan sponsors must report and pay the PCORI fee using IRS Form 720. The fee amount for plan years ending on or after Oct. 1, 2022 and before Oct. 1, 2023 is $3 multiplied by the average number of lives covered under the plan. See the article PCORI Fee – Proper Counting Methods for more information about how to calculate the PCORI fee.

July 31

Form 5500 Filing Deadline for Calendar Year Plans

Generally, a Form 5500 must be filed no later than the last day of the seventh month after the end of the plan year for ERISA pension and welfare benefit plans. For calendar-year plans, the deadline is July 31, 2023. With few exceptions, an employer must file a 5500 if any of its ERISA benefit plans had 100 or more covered participants on the first day of the plan year. See Form 5500 Annual Return/Report on Employee Benefit Plan for more information.

Announcing the next installment in the McGriff Survey Series: The McGriff 2023 Paid Leave and Compensation Survey! This brief survey will ask employers about their parental leave policies, paid time off allowances, and compensation strategy. Take the survey today to be one of the first to have access to our findings.

Some Things Never Change: IRS Confirms (Again) FSA and DCAP Substantiation Requirements

In the world of employee benefits, where it seems like the only constant is change, the IRS recently released a memo that confirms some things actually do remain the same. On March 29, 2023, the IRS Chief Counsel's Office released a memo that addresses claim substantiation requirements that apply to medical expenses from a health flexible spending account (FSA) and dependent care expenses from a dependent care assistance program (DCAP). The memo also outlines the consequences of failing to meet the substantiation requirements.

Most FSAs and DCAPs are offered through a Section 125 cafeteria plan, which allows employees to make pre-tax contributions. The memo reconfirms that FSA and DCAP reimbursements are included in an employee's gross income if that health FSA or DCAP does not fully substantiate any employee expense in accordance with IRS rules. Additionally, and even more frightening, cafeteria plans that don't comply with the FSA and DCAP substantiation requirements will not qualify as a cafeteria plan under the Internal Revenue Code. This means that reimbursements that are not appropriately substantiated must be included in the employee's gross income and the cafeteria plan will no longer qualify for favorable tax benefits. Salary reductions would now be taxable for the employee and considered wages for FICA and FUTA taxes. The tax consequences would apply to all FSA and DCAP reimbursements each year, including any reimbursements that were properly substantiated.

The memo sets out various substantiation scenarios based on what the IRS has seen in practice over the years and provides guidance on whether the practice in each scenario is compliant. According to the IRS memo, the following would **not** be a permissible substantiation method for medical expense reimbursement from an FSA:

- Allowing employees to self-substantiate expenses;
- Requiring substantiation of only a random sample of unsubstantiated charges to the debit card (charges that are not automatically substantiated);
- Not requiring substantiation for debit card charges that are less than a specified dollar amount ("de minimis");
- Not requiring substantiation for debit card charges from certain health care providers, such as dentists, doctors, hospitals or other preferred health care providers.

Not to be left out of the fun, the IRS confirms that dependent care expenses are not to be reimbursed before the expenses are actually incurred. These expenses are only incurred when the care is provided to the dependent, not when an employee receives the bill, is charged, or pays for the dependent care. This example seeks to address the very common issue where plans allow DCAP participants to submit a form at the beginning of a plan year with the annual dependent care expenses they will incur in the upcoming year.

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The IRS memo provides an example in which all claims are substantiated in accordance with applicable IRC and IRS requirements:

- All medical expenses are substantiated by an independent third party (this must be a party independent of the employee and the employee's spouse or dependents).
- Expense documentation describes the service or product, the date of service or sale, and the amount of the expense.
- Expenses are reimbursed using "EOB rollover" procedures that comply with IRS rules.
- Employees certify that expenses have not been reimbursed by insurance or otherwise, and that they will not seek reimbursement from any other plan covering health benefits.
- Reimbursements are substantiated via a debit card program that complies with IRS rules.

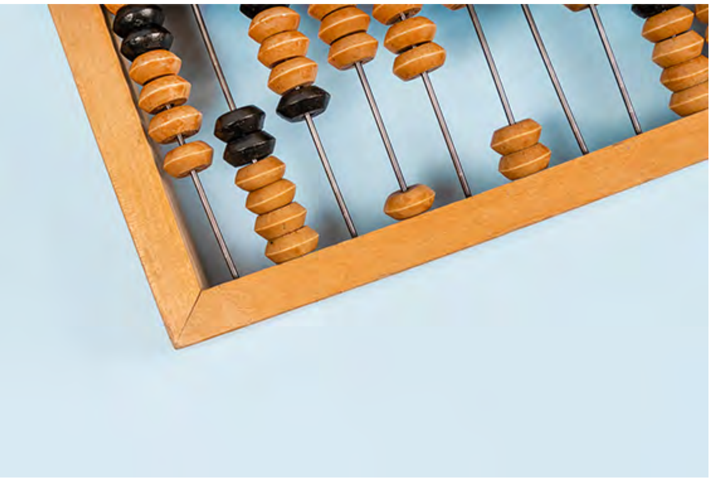
The long and short of it: substantiation in accordance with the guidance set forth in this memo is required. While this can be a tedious and even grueling task for participants and plan administrators, the IRS means business. The substantiation requirements are nothing new, in fact they have been around for many, many years. Some have speculated that the release of this memo indicates potential future audit activity in this area. Employers and plan administrators should take this opportunity to review their substantiation procedures to ensure they comply with this guidance. For additional information, please see our McGriff Q&A on FSA substantiation rules and other compliance considerations.

Anne Hensley, JD, ARM
McGriff National Compliance Practice Leader

PCORI Fees: Proper Counting Method May Help Self-Funded Plans Save Money

The due date to file and pay the 2022 Patient-Centered Outcomes and Research Institute (PCORI) Trust Fund fee is July 31, 2023. To save money on those fees, now is the time for employers to determine the best way to calculate the average lives of your plan.

Several safe harbor methods are acceptable for calculating average plan lives, although they differ between fully insured and self-funded plans. Since the employer maintains the self-funded plan as the plan sponsor, the employer must file the PCORI Fee on its own behalf. Employers have paid hundreds or thousands of dollars in fees above their minimum liability because they didn't take advantage of all available methods. In this article, we will review each method and hopefully help employers avoid paying more than their fair share of this Affordable Care Act (ACA) related fee.



The PCORI fee for plan years ending in 2022 is due by July 31, 2023 accompanied by IRS Form 720. The PCORI fee is $2.79 per member per year (PMPY) for plan years ending on or before Sept. 30, 2022 and $3 PMPY for plan years ending on or after Oct. 1, 2022. Employers may access Form 720 and Form 720 Instructions on the IRS website (www.irs.gov/forms-pubs/about-form-720) under the "Current Revision" section. As of mid-May, the latest revision to both forms was March 2023 and does not contain the updated $3 PMPY fee for plan years ending on or after Oct.1, 2022. The IRS should update these forms by the end of May 2023 and certainly no later than the end of June 2023.

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When calculating the PCORI fee, the goal is to find and leverage the counting method that yields the lowest average count of lives (members) for the applicable plan year. By comparing multiple methods and using the correct one, employers can shave their average life count, lowering the fees. For self-funded plans, there are four available safe harbor methods: Actual Count Method, Snapshot Count Method, Snapshot Factor Method and Form 5500 Method.

The Actual Count Method uses the total lives covered for each day of the plan year and divides that total by the number of days in the policy year. Rather than report plan enrollment by each day of the year, most carriers or reporting entities report enrollment totals at the beginning or end of the months within the plan year. These reports may be used as a surrogate to determine if the Actual Count Method may generate the lowest average. However, reports with actual daily counts are still required to make a final determination.

The Snapshot methods are based on the sum of lives covered on a date during the first, second or third month of each quarter of the plan year. This allows for an appropriate selection based on whether the plan enrollment has grown or shrunk during the plan year. For example, if enrollment has increased during the plan year, choosing the first or second month of each quarter is likely to generate the lowest average. While the nomenclature is similar, the two snapshot methods are quite different and often generate significantly different average life calculations:

- The Snapshot Count Method utilizes the actual count of lives within the selected months of each quarter.
- The Snapshot Factor Method uses actual counts of subscribers with self-only coverage but multiplies the count of ubscribers with dependent coverage by a factor of 2.35. Thus, if the average number of lives for the subscribers with dependent coverage is greater than 2.35, the Snapshot Factor Method will create a lower liability than the Snapshot Count Method.

Rounding out the four allowed methods is the Form 5500 method. Under this method, the plan sponsor may determine the average number of lives covered under the plan based on the number of participants reported on the Form 5500 for the applicable plan year. Since the Form 5500 for the plan year must be available for use as a determining method, plan sponsors who have not filed or have filed an extension for filing the Form 5500 will not be able to use this method.

When calculating the PCORI fee, please remember that the counts are based on covered lives under major medical coverage. Major medical coverage can be defined as coverage subject to reasonable enrollee cost sharing for a broad range of services and treatments, including diagnostic and preventive services, as well as medical and surgical conditions. For example, PCORI guidance excludes lives covered under limited scope coverage, such as hospital indemnity coverage, standalone dental or vision plans, and most HRAs, HSAs and FSAs. PCORI guidance also specifically extends this exclusion to employee assistance, disease management, and wellness program enrollment.

As medical and pharmacy costs continue to rise, it's more important than ever to trim health care expenses at every opportunity. With the PCORI fee due in a matter of weeks, please take this opportunity to verify the lowest cost method. If you have questions, encounter issues, or would simply like someone to review your calculations, please reach out to your McGriff Employee Benefits consultant and gain some peace of mind.

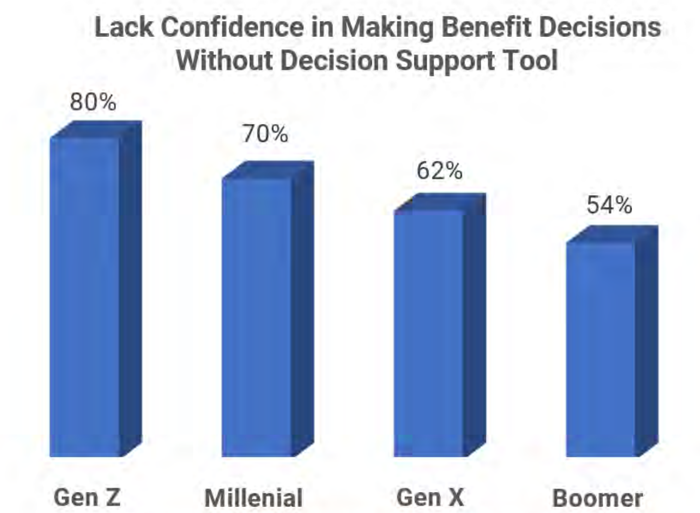
Ken Bowen, PAHM
McGriff Employee Benefits
Actuarial & Underwriting

How Much "Tech" is Your Ben Admin Technology Solution Really Using?

It is common to think of benefits administration technology (ben admin) platforms as a tool that only facilitates employee benefits enrollment and transfers benefits eligibility data between carrier and payroll systems. However, ben admin platforms can also leverage modern technologies to alleviate HR administrative burden and improve employees' overall benefits experience. Below are a few examples.

Decision Support

Think your employees aren't interested in decision support? Think again. A 2022 Harris poll found that 72% of employees said "they wish someone would tell them what the best health insurance for their unique situation is."[1] This tracks closely with data from Nayya's 2022 Employee Engagement and Benefits Trends report in which more than 70% of Millennials and Gen Zs indicated they were not confident in selecting benefits without a decision support tool.[2] If your current ben admin platform does not leverage a decision support tool, you are missing an opportunity to improve your employees' confidence in their benefits decisions as well as the value they assign to them.



Source: https://www.justworks.com/lp/benefits-knowledge-snapshot

Be mindful that not all decision support tools are created equal. The best options are hosted within the employee enrollment experience; automatically provide guidance based upon the employee's data already contained within the system; cross references that data against large claims databases; and offers employees the opportunity to further customize the recommendation through personalization. PlanSource's **Decision IQ** is an example that incorporates all of the above – boasting a 100% utilization rate. TBX's **Benefits Genius** is another intelligently designed decision support tool that is used by 87% of employees – with 85% of them electing the recommendation.

Virtual Assistants

Employees often struggle finding pertinent benefits information at the time of service (i.e., after work hours or on weekends). Does your current ben admin solution have a Machine Learning (ML) enabled virtual assistant to guide employees to the answers they need - when they need them? Different than a simple chat bot, these enhanced tools can guide an employee to their specific plan information 24/7, 365 days a year. Using natural language patterns, employees can ask questions about their specific benefits as well as how to navigate the system. Taking it a step further, virtual assistants can also drive users to underutilized benefits, such as telemedicine, when an employee asks a question like "what is my emergency room copay?" Businessolver's **Sophia** and My Benefit Express' **Expresso** are great examples of this type of technology.

Automated Dependent Documentation Verification

Could your HR team better use the time they spend manually collecting and verifying dependent documents for New Hire enrollments and Qualifying Life Events (QLEs)? Artificial Intelligence (AI) and Machine Learning (ML) can be utilized to identify and approve valid documents. By utilizing AI/ML, PlanSource's **Dependent IQ** automatically approves over 90% of the most common documents like birth certificates and marriage licenses, and an average of 65% of all documents it is continuously trained on such as domestic partner affidavits, federal tax returns, etc. Auto-approved documents will then trigger updates to carriers and payroll - without the need for an administrator's involvement.

This article was previously published in HR Professionals Magazine. For your free subscription, click here.

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Auditing with AI

Anyone familiar with ben admin platforms knows the term “garbage in, garbage out” due to never-ending discrepancy headaches produced when errant data flows between their payroll, ben admin and carrier platforms. Wouldn’t it be nice if your ben admin system utilized artificial intelligence to identity and help eliminate these errors? Benefitfirst is a provider that does just that - perpetually validating your data to optimize eligibility accuracy and improve systems synchronization. This not only generates time savings, but also premium savings because of discrepancy resolution.

Evidence of Insurability APIs

Is your organization still utilizing paper forms or electronic PDFs to manage the Evidence of Insurability (EOI) process for voluntary life and disability plans? The adoption of EOI APIs could dramatically streamline this process for both the employee and HR administrator. Platforms with these established connections allow the employee to complete EOI within the enrollment experience, eliminating the need for HR to track and manage EOI submissions to carriers. Some of the more sophisticated APIs, such as ones being deployed by PlanSource, allow the carrier’s decision to be fed back to the ben admin system, completely automating the process of updating the coverage and payroll deductions.

Carrier Eligibility & Payroll/HRIS APIs

The emergence of carrier eligibility APIs could greatly enhance the HR administrator experience. These real-time eligibility transfers – when compared to weekly EDI file feeds – improve systems synchronization. A less obvious but just as important downstream impact is the significant reduction of billing discrepancies and time spent on mundane tasks such as billing reconciliation. In the large group space, PlanSource is already leveraging these connections with several carriers.

Becoming more common for even entry-level platforms like Employee Navigator and Ease, payroll APIs greatly reduce the need for duplicative data entry into a client’s payroll/HRIS and ben admin systems. Having near real-time connectivity between the payroll/HRIS and ben admin systems means employee demographic data, including status changes (active to term, for example), and payroll deduction data are updated more frequently, without any action from an HR admin.

AI Enabled Benefits Education

According to a recent study by The Hartford, 76% of employers say educating employees about benefits remains challenging.[3] This is not surprising considering most benefits communication materials are presented generically to all employees in written form. However, the way in which employees comprehend benefit information varies greatly based on their current stage in life. For example, effectively articulating the value of a medical or critical illness plan to a baby boomer requires very different scenarios than ones used for a millennial. TBX is a provider that takes an innovative approach to this challenge. They leverage behavioral science, AI, and customized videos within the employee’s enrollment experience to bridge the gap in benefits comprehension and deliver hyper-personalized education resulting in improved understanding of and participation in the benefits offered by their employers.

If your ben admin technology platform is not providing any of the above advances to reduce administrative burden and enhance the employee benefits experience, it may be time to review new solutions.

Sources:

[1]https://www.justworks.com/lp/benefits-knowledge-snapshot

[2]Nayya Unpacking the Healthcare Crisis: 2022 Employee Engagement and Benefits Trends

[3]The Hartford’s 2022 Future of Benefits Report

Kisha Molier
McGriff National Benefits Administraion Technology Practice Leader

When Not to Worry About Turnover

Most HR professionals would agree that turnover is a source of stress. Losing an employee can feel like losing an investment, and replacing that person has its own costs—advertising, onboarding, training, and coverage to name a few. But we also know that turnover is a manageable cost of doing business, and sometimes even welcome. In short, turnover is a metric to take seriously, but also realistically.

Let's examine a few potentially stressful situations related to turnover and explore whether they're really something you should be worried about.

Potential Stressor: Your Turnover Rate Seems High

Whether a given turnover rate is high or low depends on many factors—both in and out of your control. If ineffective or toxic managers are scaring away talent, you should prioritize fixing that. If a bunch of employees resign about the same time, definitely pause and seek to understand why.

But if most of your workforce consists of students who typically leave after graduation or entry level workers who usually put in only a year or two before moving on, it's prudent to prepare for those departures, but the effect of these departures on your turnover rate needn't keep you up at night. Don't stress too much about a number—it's information that can be helpful, but also a distraction from what's really important.

Potential Stressor: New Hire Quits

It never feels good when a new hire leaves within the first few months of their tenure with you, but unless it happens repeatedly, it's probably not a red flag.

That said, digging into your recruitment and onboarding processes may help you tighten any loose ends. Look for disconnects between what is advertised and what the job actually entails. Conduct exit interviews if the departing employee is willing and ask open-ended questions about their experience. If you feel like you're getting only "safe" answers, be more pointed in trying to determine if the role was as they imagined based on how it was advertised, and whether there were any processes or people that contributed to their decision to leave.

Building a process that creates a true job preview for candidates should prevent them from feeling like they've been "had." New employees who come in with a clear picture of what to expect and then have an experience that matches those expectations are more likely to stick around.

Potential Stressor: One Team Has Much Higher Turnover

As you track turnover, you may notice spikes within one or more teams rather than throughout the whole company. Higher than average turnover rates among certain teams may point to bad management practices or unusually stressful working situations, but they also may be a sign of normal and good things happening. Approach the situation with curiosity.

You may find that teams with higher turnover operate with more entry-level or transitional positions that employees don't typically spend a lot of time in. Perhaps you have a manager who's regularly helping their reports move up in the organization or setting higher (but still reasonable) performance standards than their predecessor. You may also find that the work that team does is more stressful, grueling, or monotonous than work elsewhere in the organization. You'd expect higher turnover in these situations. It's not necessarily a problem you need to solve, but it's definitely something to account for.

Parting Thought

If you work in HR, you may have some sleepless nights. It's the nature of the job. You're constantly putting out fires, addressing emotionally challenging situations, and taking steps to make every hire a good investment for the company. When people leave, it can feel like you've failed.

But be kind to yourself. Turnover is always important—but it isn't always a problem. Turnover is normal and expected. Some turnover is good! Approach employee departures with curiosity and patience. They may indicate that something needs to be fixed or tweaked, but they may also be a sign that everything is working as it should.

This article was published by our strategic partner, Mineral, and reprinted with permission.

McGriff June Webinar Opportunities

As part of McGriff's commitment to bring you information on regulatory updates, current trends and best practices, we invite you to the following webinars in June. We hope you can join us for these educational opportunities.

Welfare Compliance 101

1.0 PDC SHRM / HRCI Pending

June 7 | 3:00 pm EDT | To register, please click here

Ogletree Deakins will walk you through the document, notice, distribution, and reporting obligations you have as an employer for your welfare benefit plans. McGriff will provide an at-a-glance compliance chart so you won't miss any of these obligations and deadlines for your company's welfare benefit plans.

(NLRB) Proofing Your Policies

1.0 PDC SHRM / HRCI Pending

June 14 | 3:00 pm EDT | To register, please click here

June 28 | 12:00 pm EDT | To register, please click here

Workplace policies, work rules, and employment agreements can create legal risk for employers – even those without organized workforces. The National Labor Relations Board (NLRB) is scrutinizing common workplace policies and practices that are often put in place simply to ensure smooth business operations and to protect workplace culture. Join this webinar to understand how the NLRB is interpreting policy language and how to strengthen policies against those risks without sacrificing the needs and concerns of the business.

Monthly Mineral Demonstration

June 27 | 2:00 pm EDT | To register, please click here

McGriff is excited to bring you Mineral — a robust web-based resource with live advisors, reliable content and interactive technology solutions that provides an end-to-end People Risk Management solution! If you are involved with 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. Join us for a brief overview of Mineral and its benefits available to you as an employee benefits client of McGriff.