It Benefits You

Your Employee Benefits Newsletter

JUNE 2020

In This Issue:

For your convenience, we have created a page on our website where we share advisories and other COVID-19 resources from our various subject matter experts. Visit McGriffInsurance.com and click the COVID-19 banner.

Return to Work: Frequently Asked Questions

Across the country, states are slowly starting to loosen the restrictions on businesses to reopen. A return to work will not mean a return to the exact environment that was both familiar and common just a few months ago. Returning to work will likely be a gradual process, and include a number of changes to policies, adjustments to physical layouts and new procedural requirements. As a result, there are several practical questions to be answered, and worksite considerations to be addressed (and prepared for) in advance of returning employees to their places of work.

McGriff continues to lead the charge to bring employers the latest updates on regulatory guidance on these issues. We have created a comprehensive FAQ document addressing some EEOC, CDC, IRS, and DOL updates about the return to work and what it may mean for your employee benefit packages.

Click here to see answers to the below questions, and many more!

- Can we require a daily temperature check as a condition to return to work?
- Will our employer-sponsored health plan cover the cost of employer testing for COVID-19 as a condition to return to work?
- What can we do if employees refuse to wear required face masks or gloves as required by the company?
- Can we take certain risk factors, such as age or underlying medical conditions, into consideration when deciding who to bring back to work?
- What if our employees do not want to return to work because they are receiving more pay through unemployment benefits?
- Will our employees be immediately eligible for health insurance benefits when they return to work, or must they complete a new waiting period?

Another Reason Family Matters… for Employee Benefit Plan Compliance!

Do you know who your family is? That may seem like a silly question for many of us. As we move toward summer, you might be thinking about who you should invite to participate in your summer BBQs and what might happen if you choose to not invite certain relatives!

Well believe it or not, some of those same considerations apply to your corporate family as well. In fact, knowing who is considered part of your corporate family is extremely important for purposes of employee benefit plan ("EB") compliance.

How you treat those family members can have significant financial and other ramifications. So, do you know who your family is…from a corporate perspective?

There are generally two sets of rules that can apply to bring another company into your family for EB compliance purposes: the controlled group rules and the affiliated service group ("ASG") rules. The controlled group rules relate companies based on ownership whereas the ASG rules relate companies based on service relationship. If two companies are sufficiently related under one of these sets of rules then they are generally considered one employer for many benefit plan purposes.

To elaborate, there are two types of controlled groups and the analysis can get pretty involved, but to greatly oversimplify, in the end there generally needs to be at least 80% common ownership. A parent-subsidiary controlled group occurs where a company owns 80% of one or more others. A brother-sister controlled group is where five or fewer individuals (estates or trusts) together own at least 80% of each company and more than 50% of each company taking into account each person's ownership interest only to the extent that it is identical with respect to each company. Plus there are situations which we term "constructive ownership rules" where one person can be considered to own the interest held by another (e.g., parent considered to own the stock owned by his/her minor children).

The IRS developed the ASG rules to address a perceived abuse with service providers, such as doctors, dentists, CPAs and attorneys, structuring their organizations to avoid being considered part of a controlled group. This enabled them to do certain things the IRS disliked, such as setting retirement plan provisions to favor the highly compensated.

There are three types of ASGs, and although the rules are much too complex to cover in detail here, they generally apply where a company is performing services for another company, or the two companies are regularly associated in performing services together. Two types of ASGs require a service organization (which is a company, such as a law firm or engineering firm, where capital is not an income producing factor) and a measure of common ownership. But the third type – a management services group – can exist without any common ownership at all! Constructive ownership rules apply here as well to attribute the ownership from one person to another in certain circumstances.

So…figuring out who is part of your corporate family can be complicated. But why is having a firm grasp of who is/not part of your corporate family so very important? Here are just a few reasons:

You must include your controlled group or ASG members in determining whether your company is an applicable large employer (ALE) member for pay or play purposes;

- You are required to identify controlled group and ASG members as part of ACA reporting for an ALE member (i.e., in Part IV of Form 1094-C – and this form includes a penalty of perjury statement);
- You must run most nondiscrimination testing required for benefit plans under the tax code, including for cafeteria plans (Section 125 testing), self-funded plans (Section 105(h)) and 401(k) plans (e.g., 410(b) coverage testing) on a controlled group or ASG basis; and

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- Structuring your medical plan to cover employers that are not part of controlled group generally creates what we call a multiple employer welfare association or "MEWA" which is subject to additional federal and state rules.

Let's take a minute and look at that last bullet point in more detail. It's pretty common, especially among small and mid-size businesses, for owners to want to cover all the companies in which they have an interest under one plan. It can allow them to get a better deal on the coverage and perhaps cover a business that wouldn't otherwise have access to a group health plan. But it's important to understand that you typically only want to include companies that are part of the same controlled group in your group health plan. To do otherwise will create a MEWA.

Although there are valid reasons to have one, most folks try to avoid creating MEWAs since they are subject to additional federal and state rules. These rules can be particularly significant (if not downright problematic) if the plan is self-funded (e.g., application and reserve requirements, annual auditing and funding reports, etc., and some states even go so far as to prohibit self-funded MEWAs).

This article originally appeared in HR Professionals Magazine in March 2020. For your free digital subscription, visit www.hrprofessionalsmagazine.com.

You may have noticed the above discussion indicates you can generally only cover controlled group members in your group health plan without creating a MEWA. But what about ASG members? While these rules can require companies be considered together for many employee benefit-related purposes, if you include them in the same group health plan it will still create a MEWA. This leads to the strange result whereby an entity must include ASG members in determining ALE status, but cannot put them on the same group health plan to possibly avoid the pay-or-play rules triggered by attaining such status.

To sum things up, the reason you need to understand whether you are part of a controlled group and/or ASG is that it will drive plan design considerations and compliance obligations. It can implicate how you structure your plan, whether you are subject to ACA pay or play and reporting rules, who you can cover under the plan, and whether the design will trigger additional tax obligations for your highly compensated employees. Family matters for EB compliance purposes – make sure you know where you stand!

Stacey Stewart, JD
McGriff Senior Compliance Advisor

McGriff COVID-19 Benefits Cost Estimator

How is the Coronavirus pandemic impacting claims costs today within self-funded plans and what are the expected future costs? Our COVID-19 Benefits Cost Estimator is an intuitive tool designed to help analyze and predict just that for our self-funded clients. Using assumptions based on regularly updated data on infection rates, hospitalization rates, and cost of care, the Cost Estimator can help plan sponsors visualize the potential cost impact in 2020 from COVID-19. Additionally, this tool also incorporates expected reductions in utilization of deferred care, such as elective surgeries, that will offset the increased costs due to the virus.

Contact your McGriff Benefits Consultant if you would like more information!

Rules of Engagement

While attending an HR conference not long ago, I was interested in the number of topics that seem to revolve around “Employee Engagement." It is evident that, as a profession, Human Resources has become re-focused on trying to tap into the emotional aspect of employment we now call engagement, and not just day-to-day employment issues.

In the past, “Rules of Engagement” was the playbook for war. Of course, there have always been laws of war – those agreements among combatants regarding how military actions will proceed, what is off limits and what is allowed, and "rules of engagement" that dictate the way they initiate battle. While HR professionals would never want to equate employment issues with war, it’s an interesting concept that engagement has a background in conflict.

In many ways, employee engagement is about setting rules outlining how the “game” of employment will be played. Several “rules” come to mind when looking at the concept of engagement – some should be considered even before the applicant is hired.

RULE 1: Measure the desire for engagement. It is a challenge to determine “fit” for any individual into not only a position, but within the organizational culture. Often clues can be found in the resume – but more often they'll be discovered during a behavioral interview. Ask questions that help you determine how seriously the candidate wants to be grafted into the new company. Throughout the interview process, ask questions that give you clues on what type of management style(s) the applicant responds well to – and those to which they respond adversely.

RULE 2: Talk specifically before the hire about the need to engage. Many times when hiring, the HR professional presumes an employee wants to work there and must, by default, want to be engaged with the organization. This is not necessarily so. Setting up the expectation before a job offer is even made, will pave the way toward an understanding of how engagement is defined in the new organization and how vital the employee’s role is in tapping into that engagement process.

RULE 3: Outline the “Rules”. Often overlooked in the on-boarding (i.e., orientation) process is the importance of reviewing the rules. This “rule book” is also known as the Employee Handbook. You may not even be aware that you are teaching the new employee the true rules of combat when you review the handbook policies with the new hire! The handbook outlines the behaviors that keep an employee in good stead – as well as those that get employees in trouble. The handbook also tells employees who to call when there is an issue – and what their responsibility is within the processes. A truly engaged employee generally has a desire to know – and follow – the rules. The disengaged worker is not overly concerned with the rules and may often flaunt them. Clearly and concisely explain why the rules are important and how exactly these policies relate to the overall mission of the organization and their place within the mission.

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RULE 4: Following onto Rule 3, Rule 4 seeks to engage the employee by making them a stakeholder rather than an employee. A great book for any employer is, "Why Employees Are Always a Bad Idea" by Chuck Blakeman (Crankset Publishing, 2014). It makes the case for transforming an organization from an "Us versus Them" mentality to one of inclusion and empowerment. It all hinges on the ability of the organization to actively engage the hearts, minds and hands of the individual to become a business partner – not just an employee who shows up, does the minimum and collects a paycheck. In war, soldiers make a written commitment to fight toward the achievement of the mission. Employers need a commitment that the employee will not work against the mission. Neutrality is better than sabotage, but ultimately, engagement is key.

RULE 5: Maybe the most important, Rule 5 reminds us that, in all battles, it is vital that the soldier has the proper equipment to complete the mission. Even actively engaged employees will become discouraged when they do not have the proper tools to do their job well. Workarounds are okay on a temporary basis – but constantly having to work around outdated or ill-suited software, equipment or even furniture can be a drain on engagement. Additionally, compensation is a tool which should be used to maximize the engagement of the employee. When employees are paid fairly and equitably, their engagement with the company is solidified in the form of trust. Nip disengagement in the bud by providing the best and most competitive – and expect that these tools are used to the maximum advantage.

Is it easy to garner engagement from every employee? No! Absolutely not! But, often, going back to basics is the best way to jump-start the process. As the saying goes, "it ain't rocket surgery." It's really something much more important.

Janie Warner, SHRM-SCP
McGriff HR Advisory Practice Leader

EEO-1 Data Collection…Delayed!

On May 7, 2020, the EEOC announced the delay of the 2019 EEO-1 Component 1 data collection and the 2020 EEO-3 and EEO-5 data collections due to COVID-19.

The EEO surveys collect data from employers in different sectors of the workforce. The following surveys were scheduled to open in 2020:

- 2019 EEO-1 Component 1, (Employer Information Report);
- 2020 EEO-3, (Local Report); and
- 2020 EEO-5, (Elementary-Secondary Staff Information Report).

EEO-1, EEO-3, and EEO-5 filers will now submit data in 2021. The EEOC anticipates that data collection will begin:

- In March 2021 for 2019 and 2020 EEO-1 Component 1 data; and
- In January 2021 for 2020 EEO-3 and EEO-5 data.

The EEOC will notify filers of the precise date the surveys will open as soon as it is established.

On-Demand COVID-19 Insights

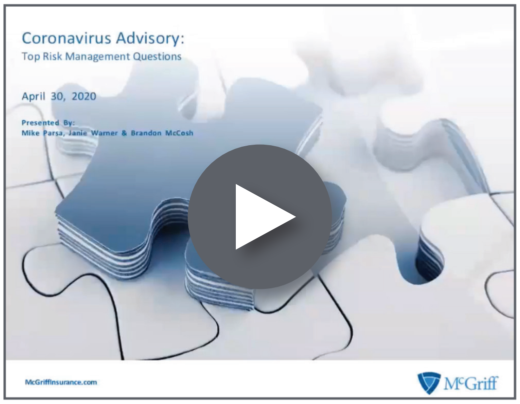
Brought to you by McGriff Specialty Practice Teams

Open Enrollment Consideration Due to COVID-19 Crisis

The sudden shift from onsite employees to remote working arrangements has led to general communication challenges for many businesses. In this recorded webinar, we discuss the potential challenges around benefits education and processing of annual elections at this year's open enrollment. Click the thumbnail to learn tips and best practices from our McGriff Benefits Administration & Technology and Communication Teams!

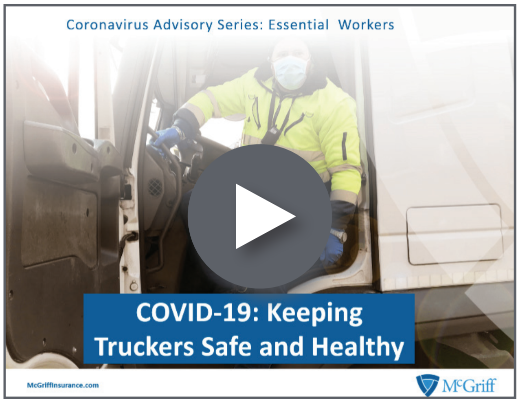
COVID-19 Top Risk Management Questions

During the COVID-19 pandemic, McGriff has answered a lot of questions. Whether it's how to handle a positive COVID-19 test, or if you should terminate employees who are afraid to work, we have the answers. Click the thumbnail to hear McGriff's Brandon McCosh, Risk Control Consultant; Mike Parsa, Technical Claims Specialist; and Janie Warner, National Human Resource Practice Leader, share their most frequently asked questions.



Keeping Truckers Safe and Healthy

During the COVID-19 pandemic, the trucking industry has become extremely critical to Americans maintaining their way of life. Truck drivers are on the front lines daily keeping stores stocked, hospitals supplied and first responders equipped during this crisis. As employers of truckers, it is imperative that trucking companies identify and implement strategies to keep their drivers healthy and safe as they keep the American public fed and our healthcare providers supplied with crucial supplies. Click the thumbnail to learn insights specific to the trucking industry from our McGriff Human Resources, Clinical Wellness, and Risk Solutions Teams!



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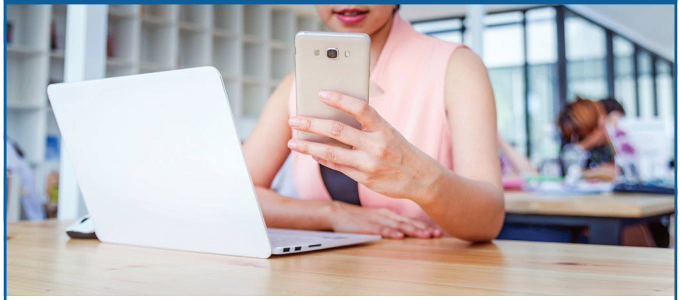
Click or Call: ThinkHR Advisors on Standby



Did You Know?

ThinkHR has created a page dedicated to resources related to the COVID-19 pandemic. The ThinkHR Live Advisors are standing by to answer your questions about how to protect your employees while still continuing to operate your business. Sign in to your McGriff Sponsored ThinkHR account today to take advantage of these resources! If you have any difficulty logging in, please reach out to your McGriff Benefits Consultant for assistance.

Get Familiar with Think HR: Join the McGriff Sponsored ThinkHR Demo!

We are excited to bring you ThinkHR — a robust web-based resource with live advisors, reliable content and interactive technology solutions — an end-to-end People Risk Management solution! If you are involved with HR compliance or employee issues at any level, this is another valuable benefit from your trusted McGriff Insurance team that can save you time and money.

Join us on June 9, 2020 at 2:00 p.m. EDT for a brief overview of ThinkHR and its benefits available to you as a client of McGriff. Click here to register!