

It Benefits You Your Employee Benefits Newsletter

September 2023

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McGriff's 2023 Retirement Benefits Survey - Open Now!

Announcing the next installment in the McGriff Survey Series: The McGriff 2023 Retirement Benefits Survey! On topics ranging from 401(k) plans to traditional pension plans, we want your input on how your organization perceives retirement matters and what plan offerings are available to your workforce. [Take the survey](#) today to be one of the first to have access to our findings.

Cruise Into Fall with McGriff's Employee Benefits Compliance Road Trip!

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 navigate a safe and compliant journey throughout your plan year!

This stop on our Compliance Road Trip will include a look at the proposed Mental Health Parity and Addiction Equity Act (MHPAEA) rules that contain significant new guidelines around ensuring parity as it relates to nonquantitative treatment limitations (NQTs) between medical/surgical benefits and mental health/substance abuse disorder benefits. Our webinar also will include key compliance considerations for the upcoming open enrollment season. Finally, we'll dedicate time to address upcoming compliance deadlines and other hot topics in employee benefits.

Thursday, September 21 | 2:00 pm EDT | 1.0 PDC HRCI/SHRM

[REGISTER HERE](#)

Presented by:



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Upcoming Compliance Deadlines

September



Summary Annual Report (Calendar Year Plans)

If an employer is required to file a Form 5500, then it must also provide a summary of the information in the Form 5500 to plan participants in the form of a summary annual report (SAR). Generally, the plan administrator provides the SAR within nine months of the close of the plan year – for calendar year plans, that deadline is September 30, 2023. [Learn more here.](#)

October



Medicare Part D Notices

The Centers for Medicare and Medicaid Services (CMS) requires plan sponsors that provide prescription drug coverage to furnish Part-D-eligible individuals with a notice disclosing the creditable or noncreditable status of their coverage by October 14, 2023.

If a health plan's open enrollment period begins on or before October 14, plan sponsors can meet this requirement by including the Medicare Part D notice in the plan's open enrollment materials. [Learn more here.](#)

November



Employers Must Use New Form I-9

On August 1, 2023, the U.S. Citizenship and Immigration Services (USCIS) published a new version of its Employment Eligibility Verification form, also known as Form I-9. Employers are required to use the new form exclusively beginning November 1, 2023, or be at risk for serious penalties. The Form I-9 instructions also clarify procedures for employers that are eligible to utilize remote examination as an alternative to physical examination of employees' documentation. Employers enrolled and participating in E-Verify may choose to examine documents remotely. [Learn more here.](#)

Don't Choke on the Gag Clause Attestation Rules

The Consolidated Appropriations Act (CAA) of 2021 includes a prohibition on "gag clauses," that prohibits group health plans and health issuers (insurers) from entering into agreements with providers, provider networks or administrators that would, in essence:

- Restrict the plan or insurer's ability to provide information about the cost or quality of care
- Restrict the plan or insurer's ability to share or access financial information such as de-identified claims

The prohibition is intended to promote the transparent disclosure of information and to ensure that plans and insurers are not contractually hampered in their ability to share information not otherwise protected by other laws such as HIPAA, the Americans with Disabilities Act, or the Genetic Information Nondiscrimination Act. A classic example would be a contractual term that treats rates payable to providers at a point of service as proprietary.

The CAA also includes a requirement that plans and insurers annually attest to regulators that they are compliant with this prohibition. While the anti-gag clause rules have been in effect since the law was passed in late December 2020, the affirmative attestation component was initially delayed pending guidance from regulators regarding how and when to submit these attestations of compliance.

Regulators finally issued a set of [Frequently Asked Questions](#) (FAQs) in February of this year providing the awaited guidance. These FAQs clarify that group health plans and insurers will be required to submit their first attestation of compliance, indicating that no prohibited gag clauses exist in contracts for the period covering Dec. 27, 2020, when the gag clause prohibition went into effect, no later than December 31, 2023.

Subsequent attestations covering the period since the last submission will be due Dec. 31 each year thereafter. Attestations must be submitted through a [web form](#) created by the Centers for Medicare and Medicaid Services (CMS). CMS has also created a [web page](#) with resources to assist entities in understanding these requirements, such as instructions for submitting attestations and a user manual for the relevant web form used to attest.

Perhaps frustratingly for self-insured plan sponsors, the FAQs make clear that the prohibition and attestation rules apply to health plans and insurers, but do not directly regulate other vendors such as third-party administrators (TPAs) or pharmacy benefit managers (PBMs). As a result, fully insured plan sponsors should generally be able to rely on carriers to submit attestations on their behalf, while self-insured plans will need to determine whether their TPA and/or PBM are willing to submit on their plan's behalf.

The FAQs make clear that self-insured plans may satisfy the requirement to submit a gag clause prohibition compliance attestation by entering into a written agreement with a service provider enabling the provider to attest on the plan's behalf, though the legal requirement to provide an attestation remains with the self-insured plan. And, naturally, self-insured plans may face resistance from vendor partners who are unwilling or unable to take on this obligation.

On the subject of who and what is being regulated, the gag clause rules apply to health insurers, fully insured and self-insured group health plans, including ERISA plans, non-Federal governmental plans, and church plans subject to the Internal Revenue Code. Grandfathered status is irrelevant for these purposes. Excepted benefits such as dental and vision coverage are exempt, and account-based plans such as health reimbursement arrangements, while not technically exempt, will not face enforcement action. Most vendors worth their salt will be willing to provide information regarding whether or not their benefits offerings are subject to these rules. If in doubt, ask!

So, what should employer plan sponsors do now?

First, take a deep breath. This upcoming obligation is not expected to require nearly the heavy lift as some of the CAA's other compliance obligations, such as MHPAEA comparative analyses or prescription drug reporting.



Second, confirm with vendors that your contract(s) do not contain the prohibited gag clauses. Because the gag clause prohibition attestation will essentially operate as a promise to the government that your plan(s) do not contain the prohibited gag clauses, employer plan sponsors must verify that this is in fact true.

Third, determine who will submit the attestation on the plan's behalf. Carriers and TPAs have begun to communicate their strategies to assist plan sponsors in meeting their obligations by either submitting the attestation on their clients' behalf or advising that they will not be doing so. If you have not received communication to this effect, now is the time to ask questions. Ask your carrier/TPA how they plan to assist their clients in complying with the anti-gag clause rules. If you determine that your relevant vendor partners(s) will be submitting the necessary attestation on your plan's behalf, document this information and check it off your to-do list.

And finally, if you determine that you will be responsible for submitting an attestation, become familiar with the resources CMS has created to assist. These resources are also available at the CMS [web page](#) mentioned above.

Please see our [Compliance Bulletin](#) for more information on the upcoming gag clause compliance attestations, and reach out to your McGriff Account Team with specific questions.



Stephanie Raborn, JD
McGriff EB Compliance Officer



The Transformative Impact of Generative AI on Wellness

By now, many people have heard of ChatGPT and the broader field of Generative Artificial Intelligence (GenAI). The popularity of GenAI tools is soaring, garnering millions of users globally, and has become a powerful resource in areas like education, computer programming, travel planning, creativity, and even emotional support.

GenAI's rapid popularity has also led people to ring alarm bells in terms of its misuse (e.g., for writing academic papers or college admissions essays) or its use as a substitute for professionals (e.g., TV and movie writers, travel agents, artists and musicians). As GenAI and AI in general become more sophisticated, it will become an even larger challenge for HR leaders to help their companies and employees navigate this transformative technology so that it can be deployed beneficially.

GenAI in Wellness

One area where HR leaders may not have considered GenAI is wellness. But there are actually several ways GenAI can have a positive impact on mental, emotional, and physical well-being:

1. **Therapeutic Conversations:** AI-powered chatbots like Woebot offer 24/7 emotional support by engaging users in conversations that mirror therapeutic sessions. This accessibility can alleviate feelings of loneliness and provide a safe space for expression.
2. **Personalized Meditative Experiences:** GenAI is being used to create personalized meditation sessions. These sessions adapt to users' preferences and emotions, enhancing relaxation and mindfulness practices.
3. **Creative Expression:** For those seeking creative outlets, GenAI tools assist in generating art, poetry, and music. This creative expression can be immensely therapeutic, providing a way for individuals to channel their emotions into something beautiful.
4. **Health Tracking and Insights:** GenAI is also utilized to analyze health data and provide actionable insights. This helps individuals make informed decisions about their well-being, from fitness routines to dietary choices.
5. **Wellness Routines:** GenAI could be used to create a customized workout plan, meal plan, or even a wellness itinerary for the day. With the right prompts around restrictions or preferences, people can continuously fine-tune the recommendations to their goals and lifestyle.

Flaws and Risks of GenAI in Wellness

While the potential benefits of GenAI in wellness are significant, it's important to acknowledge the potential drawbacks and risks:

1. **Lack of Human Connection:** Relying solely on AI for emotional support might lead to a decline in genuine human interactions, potentially exacerbating feelings of isolation.
2. **Bias and Inaccuracy:** GenAI systems can inadvertently amplify biases present in their training data. This could lead to inaccurate or insensitive advice, affecting users' emotional well-being.
3. **Privacy Concerns:** Sharing personal information with AI tools raises concerns about data privacy and security. Unauthorized access to sensitive data could lead to breaches of trust and psychological distress.
4. **Depersonalization of Therapy:** While AI chatbots offer accessible therapy-like interactions, they cannot replace the depth and expertise of human therapists. Relying solely on AI for mental health support might hinder users from seeking professional help when needed.

Conclusion

GenAI can undoubtedly add value to the wellness landscape, offering innovative ways to enhance emotional, mental, and physical well-being. However, to fully harness its benefits, we must remain cognizant of its limitations and potential risks. At this stage, companies would be best served to leverage GenAI tools only as complements to humans.

Think of it this way: People have the ability to take GenAI output and add context that the data models underlying the tools are not (yet) sophisticated enough to incorporate: cultural, societal, ethical, and even commonsensical. By striking a balance between AI-assisted support and human interactions, we can pave the way for a future where technology and well-being harmoniously coexist.

Nirav Desai

McGriff - Peak Health Managing Director



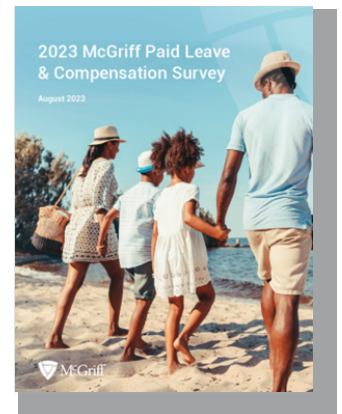
McGriff Wellness Solutions

If you're interested in wellness solutions with experts that cannot yet be replaced by GenAI, check out Peak Health, a wholly owned subsidiary of McGriff. Peak Health uses nurses to provide outcomes-driven health risk assessments and wellness coaching. To connect with Peak Health, contact your McGriff Employee Benefits Consultant.



2023 McGriff Paid Leave & Compensation Survey

In this latest installment of the McGriff Survey Series, we asked employers about their paid leave benefit offerings and compensation strategies. We heard from 412 employers in all major industries across the country – with large employers (500 or more employees) representing 15% of all responses. With the varying complexities and requirements from different state and local municipalities, managing leave and compensation can be difficult for internal teams to manage, stay compliant, and compete with other employers. [Review the full report](#) to find out more about what organizations just like yours are doing to promote employee work/life balance and help meet their recruiting and retention goals.



Key Findings

- 1 When asked which benefits their organization offers to their employees, nearly all employers offer paid vacation (99%), while more than half offer paid sick leave to their employees (55%). Thirty-nine percent of employers offer paid maternity leave and 30% offer paid paternity leave; 29% offer both.
- 2 Employers that offer paid parental leave may set requirements before employees become eligible for the benefit. Forty percent of employers report that employees are eligible for paid parental leave after 12 months of employment while 30% report they are eligible upon hire. Forty-one percent report employees must be full-time and 34% report they must work at least 30 hours per week.
- 3 Sixty-nine percent of employers said they pay 100% of their employee's regular earnings during parental leave and 73% offer employer-sponsored disability to birth mothers during their medical recovery.
- 4 Most employers base their vacation/PTO allowances on tenure (99%), job title (14%), and/or pay grade (3%). Sixty-three percent of employers allow employees to carry-over their PTO from year to year, with a maximum of five days being the most common. Seventy-seven percent of employers pay out unused vacation/PTO upon separation. Four percent of employers offer unlimited PTO to their employees.
- 5 When filling a new position, 44% of employers say they pay whatever is necessary to fill the opening. When planning for base pay increases, 61% rely on cost-of-living adjustments (COLA) and 52% base increases on performance. Seventy-eight percent of employers offer performance bonuses and 45% offer sign-on bonuses.
- 6 Thirty-nine percent of employers have a formalized compensation management plan and another 26% are thinking about implementing one in the next 12-18 months. Forty percent of those who have one use a vendor to assist with their compensation management plan.

Compensation, Retention & Rewards - Trends and Best Practices for Today's Workforce

To say that the workforce of 2023 is unlike those of the past is definitely an understatement for employers! As new generations enter the working world and organizations grapple with economic challenges and post-COVID fallout, finding, compensating, rewarding, and retaining talent has never been more important. This learning opportunity from McGriff will cover trends in compensation, benefits, and rewards that will lead to better recruitment and retention of top talent. We'll share benefit trend survey results along with additional data from a McGriff HR survey on leave programs and total compensation.

Wednesday, September 27 | 12:00 pm EDT | 1.0 PDC HRCI/SHRM Pending | [Register here](#)



Healthcare Must Be Focused on the Patient Journey

As the healthcare landscape has evolved to value-based care, employers, payers, and pharmacy benefit managers (PBMs) have implemented new strategies to improve quality of care and affordability. Ninety percent of the nation's \$3.5 trillion in annual health care expenditures are for chronic and mental health conditions.¹

Who really controls your drug spend? It is not the PBM formulary alone, nor is it providers or hospitals. Looking across all stakeholders, we should begin and end with each patient's individual journey. Their genetic code. Their lifestyle choices, especially smoking, eating a healthy diet, and exercise. Each individual makes decisions like these that can help prevent diabetes and heart disease. That's why, now more than ever, it is imperative that healthcare is focused on the patient journey.

Educating and empowering individuals to take better control of their health starts with engagement and a comprehensive approach that considers both affordability and quality of care. Engaging them early in the journey is vital to prevent disease progression and comorbidities that will ultimately be much more costly if left untreated.

More than 37 million people in the United States have diabetes, representing 12% of the population. Predictive modeling indicates that 8 million people are undiagnosed. Due to lifestyle choices, it is estimated that 96 million adults have pre-diabetes, representing over 35% of the adult U.S. population.²

A newly diagnosed patient with Type 2 diabetes will incur an average annual healthcare spend of \$25,000. If not well controlled with first line medication and lifestyle changes,

patients can progress to more expensive self-injectables that cost as much as \$40,000 per year. If insulin is added, the cost doesn't increase significantly. But it does indicate disease progression, specifically microvascular and macrovascular damage that can cause poor blood circulation, damage to the retina, heart disease, stroke, kidney failure and amputation of feet or legs.³

Heart disease is the No. 1 cause of death in the U.S., according to the Centers for Disease Control and Prevention. Nearly 860,000 Americans die every year from heart disease and stroke combined, representing one-third of all-cause mortality. The cost of care for these diseases is a significant burden, costing our health care system \$200 billion per year and resulting in an additional \$130 billion in lost productivity for employers.³

Patients with diabetes are typically treated with drugs to manage their blood glucose (sugar). Consideration should also be given to managing their triglycerides (the most common type of fat) and cholesterol. Standard treatment guidelines include close monitoring of cardiovascular disease, and many patients are placed on a drug such as an ACE inhibitor to control their blood pressure and improve blood circulation. This is vital to ensure adequate blood circulation to their kidneys and lower extremities (legs and feet).

The year 2021 marked the 100th anniversary of the discovery of insulin, a lifesaving therapy for millions of people. Insulin prices have increased 600 percent over the last 20 years, causing many consumers to be at risk of non-adherence due to cost.⁴

Solving the Affordability Issue - Legislation Influence

The [Inflation Reduction Act](#), a spending package Congress approved in 2022, capped insulin out-of-pocket costs at \$35 for [Americans with Medicare](#). This does not apply to consumers with commercial insurance plans who may pay the full price for medications under high-deductible plans. For these individuals, out-of-pocket expenses can be [\\$1,000 or more a month](#) on insulin alone.⁵

Eli Lilly, a manufacturing pioneer in diabetes treatments, recently announced a 70% cost reduction for two of its most popular insulin products, Humulin and Humalog, for uninsured patients and those with private health insurance. Lilly also reduced the price for its generic lispro from \$126 to \$25 a vial. These price reductions are expected to improve medication adherence since individuals will be better able to afford them. These changes follow efforts by the [federal government](#), the [California state government](#), non-profits and [some companies](#) to make insulin more affordable for the [more than 7 million](#) Americans with diabetes who require it.⁶

Lilly's actions have placed significant pressure on their competitors, Novo Nordisk, and Sanofi. Making their insulin more affordable to cash-paying patients will encourage pharmacies like [Mark Cuban's Cost Plus Drug Co.](#) and [Blueberry Pharmacy](#) to add them to their low-net-cost formularies.⁶

[CivicaRx](#), a non-profit drug manufacturer owned by several Blues plans, intends to manufacture affordable insulins in 2024. Civica will produce three insulins: glargine, lispro and aspart, which are comparable to Lantus, Humalog and Novolog, respectively. They will be available in vials and prefilled pens. Civica plans to set a recommended price of no more than \$30 per vial and no more than \$55 for a box of five pen cartridges, a significant discount to prices charged to uninsured individuals today. Their policy for pharmacies and others who choose to distribute Civica insulins reflects its philosophy that prices to consumers should be fair, reasonable, and transparent, and no higher than the public, recommended price.⁷



Denise Cabrera, Practice Leader
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This article was previously published in HR Professionals Magazine. For your free subscription, click [here](#).

Sources:

¹<https://www.cdc.gov/chronicdisease/about/costs/index.htm>

²[The Facts, Stats, and Impacts of Diabetes | CDC](#)

³American Diabetes Association. Economic Costs of Diabetes in the U.S. 2018;41(5):917-928

⁴[Prevalence and Correlates of Patient Rationing of Insulin in the United States: A National Survey acpjournals.org](#)

⁵[JAMA Health Forum – Health Policy, Health Care Reform, Health Affairs](#)

⁶[Eli Lilly Will Cap Insulin at \\$35: What to Know \(healthline.com\)](#)

⁷[Civica to Manufacture and Distribute Affordable Insulin - Civica Rx](#)



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

Welfare Compliance 101

September 19 | 3:00 pm EDT | [Register here](#) | 1.0 PDC SHRM/HRCI

In this webinar, the attorneys of Ogletree Deakins will walk you through the document, notice, distribution, and reporting obligations you have as a plan sponsor for your welfare benefit plans. McGriff will provide an at-a-glance compliance chart so you are sure not to miss any of these obligations and deadlines for your company's welfare benefit plans.

Tales from the Trenches: Document Disasters...and How to Prevent Them

September 14 | 3:00 pm EDT | [Register here](#) -or- September 26 | 12:00 pm EDT | [Register here](#) | 1.0 PDC SHRM/HRCI

You've heard it many times – documentation is key in employment charges and litigation. Documents can provide some of the best evidence to support your defense. But what happens during litigation when the document does the opposite? Or maybe the document does not exist at all? During this webinar, the attorneys of Ogletree Deakins will cover key documentation do's and don'ts. Invite your supervisors and managers to participate in this webinar!

Monthly Mineral Demonstration

September 19 | 2:00 pm EDT | [Register 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 on for an overview of Mineral and its benefits available to you as an employee benefits client of McGriff.

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