

# It Benefits You Your Employee Benefits Newsletter

February 2023

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## Welcome to the February 2023 Edition of *It Benefits You!*

With the arrival of February, we are somehow already one-twelfth of the way through 2023. Many of us are still recovering from the holiday season and working furiously to get out ahead of the new year. Speaking of the new year, research suggests up to 80% of new year's resolutions fail before the start of February.

While you may be concerned about Americans' commitment to working out, eating healthier and saving money, one thing you should not worry about is McGriff's unwavering commitment to meeting your benefits needs. Whether you have questions regarding recent compliance changes, lowering the cost of your benefits or cultivating a healthier, happier workforce, do not hesitate to reach out to your McGriff team.



## The McGriff 2023 National Benefit Trends Survey is Live!

Weigh in on the employee benefits challenges and strategies your organization is facing this year and be among the first to hear from us about the results! If you have not yet responded, please [click here](#) to take the survey. The survey will close later this month so don't miss your chance to participate.

LET YOUR VOICE  
**BE HEARD**

McGriff 2023 National Benefit Trends Survey is now live.

**COMPLETE OUR SURVEY TODAY!**



## Upcoming Compliance Deadlines

February



### IRS Transmittal of Forms 1094-B/1095-B & 1094-C/1095-C

An Applicable Large Employer (ALE) must file Form 1094-C, as well as the 1095-C forms sent to all full-time employees with the IRS by February 28, 2023. A self/level-funded employer with under 50 full-time employees will file Form 1094-B, as well as the 1095-B forms sent to employees covered under the employer-sponsored health insurance plan. **March 31** is the electronic filing deadline for employers filing 250 or more forms.

March



### Medicare Part D Coverage Disclosure to CMS for Calendar Year Plans

Employers whose group health plans provide prescription drug coverage must report to CMS within 60 days after the beginning of the plan year whether the benefits are creditable with respect to Medicare Part D coverage.

March



### MEWA Annual M-1

Multiple Employer Welfare Arrangements (MEWAs) must file their Form M-1 annual report by March 1 with the DOL. This filing requirement applies to all MEWAs, including insured and self-insured arrangements.

March



### IRS Forms 1095-B/1095-C Due to Individuals

A self/level-funded employer with fewer than 50 full-time employees must provide 1095-B individual statements to employees covered under the employer-sponsored health insurance plan. The IRS now allows a self/level-funded non-ALE employer to meet this obligation using an alternative manner of furnishing by posting a clear and conspicuous notice on its website stating that responsible individuals may receive a copy of their statement upon request. An ALE must provide 1095-C individual statements to full-time employees with specific information relating to each employee's offer of coverage for every month during the 2022 year. The original deadline of January 31 is now permanently extended to March 2.



## McGriff Affordable Care Act (ACA) Reporting Toolkit - 2022 Forms 1094-C/1095-C

Each year, Applicable Large Employers and employers sponsoring self-funded/level-funded medical plans (regardless of size) must complete required ACA reporting pursuant to Internal Revenue Code Sections 6055 and 6056.

McGriff has created a comprehensive ACA Reporting Toolkit to assist in the many questions that arise for employers when completing these requirements, both when reporting on their own and coordinating with their chosen ACA reporting vendor.

[Click here](#) to download the McGriff ACA Reporting Toolkit.



## No Rest for the Weary:

### *2023 Employee Benefits Compliance Considerations*

When it comes to employee benefits compliance obligations, last year was not for the faint of heart! It's not looking much better for 2023. As was the case in 2022, plan sponsors and their administrators will be busy keeping up with all of the various transparency requirements, which are designed to pull back the curtain on the cost of healthcare and prescription drugs. Other areas of focus will be a health plan's coverage of mental health benefits and (hopefully) the end of the COVID-19 public health and national health emergencies.

As we look ahead to a fresh new year, here are just a few things the McGriff Employee Benefits Compliance Team will be monitoring:

- **RxDC Reporting:** The Consolidated Appropriations Act of 2021 (CAA) requires group health plans to report information on medical costs and prescription drug spending to the secretaries of Health and Human Services (HHS), the Department of Labor (DOL) and the Department of the Treasury. This process is referred to as the prescription drug data collection (or RxDC report). Though the date for initial reporting for 2020 and 2021 was due by Dec. 27, 2022, information for subsequent years will be due by June 1 of the following year (2022 data will be due June 1, 2023). To prepare, plans should: 1) confirm who will submit the required data to CMS and coordinate data sharing, if needed, so any reporting entity can access all data needed to complete the files, 2) obtain a written agreement (or, at a minimum, save relevant communications) from
- **Mental Health Parity:** The Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) is a federal law that generally prevents group health plans and health insurance issuers that provide mental health and substance use disorder (MH/SUD) benefits from imposing less favorable benefit limitations on those benefits than on medical and surgical coverage. Certain group health plans and health insurance issuers are required to conduct comparative analyses of the non-quantitative treatment limitations (NQTLs) used for medical and surgical benefits as compared to MH/SUD benefits. These entities are also required to test their health plan's quantitative treatment limitations (QTLs) on an annual basis to ensure mental health benefits match medical surgical benefits. This is an area of high priority for the Biden Administration, so we expect greater enforcement in this area in 2023 and beyond. As such, plans should: 1) review the [DOL's NQTL self-compliance assessment tool](#), proactively consult with their TPA/PBM and revise service provider contracts to address responsibilities of the plan sponsor and the

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TPA/PBM, 2) request a copy of any NQTL comparative analyses and supporting documentation and review with the plan sponsor's benefit attorney, and 3) develop internal controls, including training for individuals involved in plan administration, regular plan audits and a process for participants to file complaints.

- **Health Plan Transparency Requirements:** Non-grandfathered group health plans and health insurance issuers must make an internet-based price comparison tool available without subscription or other fee to participants, beneficiaries and enrollees as required under the final Transparency in Coverage (TiC) rule. The tool will provide consumers with real-time estimates of their cost-sharing liability from different providers for covered items and services. Upon request, group health plans and issuers must make this information available in paper form as well. The tool must allow users to search for cost-sharing information for a covered item or service by entering certain information, such as a billing code or descriptive term, in-network provider's name or certain other relevant factors. Plans should confirm that carrier/TPA will comply with the price comparison tool requirements, beginning with 2023 plan years, and ensure this compliance responsibility is reflected in a written agreement.

The TiC rule also required non-grandfathered group health plans to make Machine Readable Files (MRFs) publicly accessible beginning on July 1, 2022 (for plan years beginning on or after Jan. 1, 2022 and before July 1, 2022) or the month in which the plan year begins for plan years after July 1, 2022. Plans must make sure that there is a strategy in place to update their MRFs monthly with accurate and complete in-network provider rates and out-of-network allowed payments.

- **Affordable Care Act 2023 affordability percentage:** The Affordable Care Act (ACA) requires applicable large employers (ALEs) to offer coverage that is minimum value and affordable to full-time employees. The Internal Revenue Service (IRS) updates the affordability percentage annually and in 2023 the affordability

standard was lowered to 9.12% of an employee's household income for the 2023 plan year. This is a significant decrease from the 2022 affordability percentage of 9.61% and the lowest this percentage has ever been set since the rules were implemented. This affordability percentage can directly impact an employer's potential liability for employer-shared responsibility (or "pay or play") penalty assessments. While employers with calendar year plans began preparing for this impact in 2022, employers sponsoring non-calendar year plans should be aware that they may need to lower their 2023 employee contribution rates to accommodate this adjusted percentage.

- **COVID-19 public and national health emergencies:** McGriff will be awaiting any guidance from the Biden Administration that ends the public health and national emergency periods. When this does occur, group health plans will have to unravel several COVID-19 related deadline changes and other health plan mandates, including the extended deadlines for claims and appeals, special enrollment under the Health Insurance Portability and Accountability Act (HIPAA) and continuation coverage elections and payments under the Consolidated Omnibus Reconciliation Act of 1985 (COBRA).

Employer-sponsored health plans must comply with the rapidly changing federal and state law landscape and regulations. The transparency requirements alone have turned out to be a significant undertaking for group health plans, health insurance issuers and administrators, even more cumbersome than ACA provisions implemented over a decade ago, some have argued. But have no fear. McGriff is here with tools and resources to help keep our clients up to date with all of the latest legislation and regulations affecting benefit plans. For an in-depth review of 2023 employer compliance considerations, please see our Health & Welfare Compliance Considerations checklist [here](#).



**Anne Hensley, JD**  
McGriff Employee Benefits Compliance  
Practice Leader



## Optimism and the Winter of Discontent

I recently found my old copy of John Steinbeck's "The Winter of Our Discontent." I remember reading this novel in high school (more years ago than is prudent to share) and not truly appreciating the sentiment of the plot. But it's 2023 and following the very turbulent last few years, it seems a great time to reflect on the past and celebrate the hope and new beginning that a fresh year brings.

Often used in a negative context, the "winter" of our discontent is actually a very positive statement. From Shakespeare's reference in Richard III, it is a bold, positive statement that the past is done – and the future is looking very bright! Of course, winter is seen as the time when so much of life lies dormant – an ending, if you will, of planting, growing and harvesting seasons. In the same way, all the negativity from the last few years seems to be truly in the past and the future is starting to look much different. Is the world perfect? Of course not! But perhaps it's time to start focusing on the end of our discontent era and start planning for a different year in 2023.

Most every businessperson is ready for a new season and a change in the old patterns of negative circumstances and behaviors from employees. Unemployment numbers are still low, but many jobs are left unfilled. As the search for skilled, experienced workers continues, aligning compensation with both inflation and worker demand is a daunting task. The pandemic seems to be lessening its grip on society and there are opportunities for executive management to create and sustain a positive work environment. How to start? I'm glad you asked!

### Step 1: Flip the Script

Rather than constantly addressing negative issues, keep a laser focus on positive outcomes. For example, are you still wrestling with remote work arrangements? Having trouble getting employees to return to the office? Look closely at the success and productivity of the remote worker. If it is working, why change it? If it is not working, look closely at why. Employees will respond to how they are managed. If productivity has fallen, look at how your staff has been managed. Engage more with them. Check in more frequently. Have productivity goals in place and review these goals often with each employee. Do not just assume a remote employee is not fully engaged. Do your part! Be present with your staff DAILY. And, by the way – this strategy should also apply to folks who are still sitting outside your office door!

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## Step 2: Have an Open Dialogue

Employees want to be informed. There are very few employees who will purposely choose to stay in the dark about what's going on in their organization. Do you have meetings to discuss turnover numbers? Do you talk openly about the challenges of management to keep employees focused and engaged on the mission of the organization? Do you share the financial reports with your staff? Do they understand the difference between profit and operating income? Discontent grows when information is scarce. Keeping the dialogue going and sharing information about how the company actually works is a great way to head off false narratives. One of the cardinal rules of HR is still, "When employees are not given correct information, they will make up their own story." More often than not, their stories will be quite negative and will impact the entire organization. Talk and talk often - and give employees an opportunity to speak as well.

## Step 3: Recognize Life Outside the Workplace

Companies have, for the most part, become quite adept at recognizing important work achievements by their employees. All kinds of programs have been developed to celebrate the successes within an organization. But what about celebrating those things that happen outside of work? Do you celebrate when an employee completes a half marathon? When they have a new baby – or a new grandchild? What about when they adopt a pet? Do you recognize community volunteer efforts, such as spending time working at a homeless shelter? Working with Habitat for Humanity or volunteering at a veterans event? What about the not-so-happy events that make up every person's life? Do you acknowledge family losses - or help when an employee's significant other loses their job or has an illness?

HR has long recognized the importance of the "whole person." It is important that we focus on what makes our organization grow, but we must embrace the idea that our employees' lives are about more than the time they spend at their job. When their employer acknowledges what happens in the hours when they're NOT at work, engagement level increases.

## Step 4: Walk A Mile in Their Shoes

There have been several advertisements recently touting the sentiment "we're all in this together." While it sounds nice, it's really not true. It even sounds as if everyone is in the same circumstance due to (fill in the blank). In the workplace, no two employees are in the same situation at the same time. An online blogger recently posted a glaring example of the disconnect. He and his co-workers were discussing the reality of trying to make ends meet with the economic reality of inflation and the rather flat response from their organization regarding inflation and the shrinking value of their hard-earned dollars. A senior manager, thinking she was being empathetic, stepped into the conversation and shared that she and her family were going to have to postpone buying a vacation home because of the economy. Needless to say, her input was not met with anything except disdain. It's okay to empathize. It's not okay to equate the reality of your entry and mid-level staff with that of executives. The reality is we are NOT in the same boat. It is still a good idea to look at employee circumstances and make adjustments where they can be made. By taking off your management/executive shoes and walking a mile in the shoes of your lowest-paid workers, you will better understand their real needs. And when you express a true understanding of their day-to-day struggles, they will trust that you're looking out for them. That builds trust. And trust is the foundation for engagement.

Are you ready to accentuate the positive? It's the start of a new season. Let's celebrate the winter of our discontent and look forward to a better, brighter season that is ahead. Happy New Year!



**Janie Warner, SHRM-SCP**  
McGriff HR Advisory Practice Leader



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



## The Never-Ending No Surprises Act: Where are Plan Sponsors Still Waiting on Guidance?

By now, employers sponsoring group health plans are familiar with the No Surprises Act and the associated compliance obligations. But while many provisions went into effect on or after Jan. 1, 2022, several were delayed, and we remain alert to future guidance. In particular, how to comply with following provisions: remain a source of relative mystery to affected parties:

- Prohibition on Gag Clauses Attestation
- Advanced Explanation of Benefits (EOBs)
- Air Ambulance Reporting

All three were designed to provide more insight into the cost of health care and to protect consumers from unnecessary financial burden.

The gag clauses prohibition is supposed to remove contractual barriers that restrict plans or insurers from making quality or price information available to consumers in network contracts, for example.

The requirement to provide an advanced EOB before scheduled treatment is intended to provide patients a reasonable estimation of the costs of treatment.

And the requirement to report air ambulance information is, as one might guess, intended to provide clarity as it relates to the costs of these services.

These provisions are briefly summarized below:

- **Prohibition on Gag Clauses Attestation (Annually, Initial Attestation Deadline Unknown):** Vendor agreements entered into on or after the end of 2020 may not contain restrictions on the disclosure of

certain information related to the cost or quality of services, i.e., gag clauses. Plan sponsors are supposed to annually submit an attestation to the Departments certifying they are in compliance with these requirements.

The attestation essentially states that the plan sponsor's agreements with providers, provider networks, and vendor contracts do not contain the prohibited gag clauses. While the substantive portion of the gag clauses prohibition is already in effect, where and how to submit the attestation of compliance is still unknown.

- **Advanced EOBs (Ongoing, Delayed Pending Further Rulemaking):** Plans and insurers must provide an advanced EOB before scheduled care and upon request that contains information including whether the scheduled care is in or out of network. It also must provide a good faith estimate of cost and a good faith estimate of the individual's cost-sharing amount, with a breakdown of what the plan will pay and what the individual will pay.

The Department of Health and Human Services (HHS) announced that it would defer enforcement pending further rulemaking. The deferral followed significant pushback from stakeholders, who informed regulators that compliance would require significant effort and the creation of infrastructure to support the transfer of this information.

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- **Air Ambulance Reporting (Annually, 2022 Calendar Year Reports Due 3/31/2023):** Plans, as well as insurers and service providers, must annually report to HHS certain information related to air ambulance claims and expenditures. While the deadline for 2022 information is March 31, 2023, the data collection system for this information is still being developed.

It is expected that insurers and third-party administrators will do the heavy lifting in providing advanced EOBs and the requisite air ambulance reporting, but plan sponsors should be aware that the law places a burden of responsibility directly on the plan. As a result, employer plan sponsors should remain alert to future guidance and to the possibility that action may be required on their end. In the interim, it is always a good idea to proactively reach out to carriers and TPAs to make sure they're prepared (and willing!) to assist when guidance is released.



**Stephanie Raborn, JD**  
McGriff EB Compliance Officer



## HR Q&A: Overtime Pay

### Q: Can an employee waive their overtime pay?

A: No. An employee can't waive their right to overtime pay, even if they want to. The federal Fair Labor Standards Act (FLSA) prohibits the waiver of an employee's rights to overtime pay (and minimum wage) in nearly all circumstances. The only time an employee can be exempt from overtime is when they perform work that qualifies for an exemption under federal (and state) law and meets any other applicable tests or criteria for the exemption.

The Department of Labor (DOL) recently [communicated](#) it will issue a proposed overtime rule in May 2023, according to its most recent regulatory agenda.

*This Q&A was brought to you by McGriff's strategic partner Mineral and republished with permission.*



## McGriff February 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 below webinars scheduled during the month of February. We hope you can join us for these educational opportunities about the insurance market and McGriff-sponsored resources!

### The Impact of Inflation on the P&C Insurance Market

February 16 | 2:00 pm EST

To register, please [click here](#)

The rise in inflation is not only taking a toll on the economy but also impacting the insurance market causing an increase in insurer loss costs and premiums. Join McGriff experts as we discuss the current state of the P&C market and best practices on navigating the market volatility.

### Monthly Mineral Demonstration

February 21 | 2:00 pm EST

To register, please [click here](#)

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