It Benefits You

Your Employee Benefits Newsletter

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In This Issue:

- McGriff Employee Benefits Road Trip to Compliance - Your Pit Stop for Employee Benefits Hot Topics
- Upcoming Compliance Deadlines
- Random Acts of Wellness and How to Avoid Them
- FMLA Turns 30: Let's Get Back to the Basics
- The COVID-19 Emergency is Ending But the Work Continues
- Borrowing Considerations to Fund Retirement Plan Liabilities
- Have an HR Question? Just Ask Mineral
- Six Cost Cutting Tips for Small Businesses

"Mr. Watson, come here. I need you." These are the famous first words uttered through the first telephone line by Alexander Graham Bell to his assistant. Mr. Bell would be 176 years old this month and the telephone is 147 years old! This Scottish-born American was a pioneer in communications.

McGriff is here to help you communicate your employee benefit goals. So don't hesitate, reach out to us and hear us say, **"How may we help you today?"**

McGriff Employee Benefits Road Trip to Compliance - Your 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 webinar will cover common compliance wrong turns and potential risk potholes, with a particular emphasis on ERISA obligations such as plan documents and 5500 filings. We will also dedicate time to address upcoming compliance deadlines and other hot topics in employee benefits.

Presented by: McGriff Employee Benefits Compliance Team. To register, please click here

Upcoming Compliance Deadlines

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.

Electronic Filing Deadline for Forms 1094-B/1094-C and 1095-B/1095-C

March 31 is the deadline for e-filing ACA returns and forms 1094-B/1094-C and 1095-B/1095-C using the IRS's A.I.R. system. Employers with 250 or more returns are required to file electronically.

Air Ambulance Reporting

The No Surprises Act created several new reporting requirements. Annually, within the 90-day period after December 31, plans must report certain air ambulance and claim information for the prior calendar year; however, the No Surprises Act is specific in that no reporting is required until after a final rule. No final rule was issued in 2021 or 2022, so this requirement will likely be delayed until 2024. As of the date of this publication, we have not received final guidance from CMS about this approaching deadline.

Reporting on Pharmacy Benefits and Drug Costs (Filing Deadline for 2022 Data)

Plan sponsors must report information about prescription drugs and health care spending to the CMS each year. Data for 2022 reference (calendar) year is due June 1, 2023. This reporting is required for fully insured and self-funded group health plans of all sizes. The McGriff Compliance Team has prepared a reference guide that provides employers with practical steps to help them comply with this reporting obligations, and a Vendor Assistance Verification email template that contains questions employers should ask vendors in determining what they are doing to assist.

Random Acts of Wellness and How to Avoid Them

Random acts of kindness are praiseworthy and even newsworthy. Random acts of wellness – not so much.

What do I mean by that? I'm referring to random strategies implemented by employers to impact the health and wellness of their employees and/or medically insured population.

As an employer, when you invest in wellness programs and benefits, you're investing in the health of your employees. You're betting the programs will have their promised impact in terms of population health, improved productivity, reduced absenteeism, and enhanced recruitment, satisfaction, and retention. But if the investment doesn't get the uptake or results you anticipated, you'll have to answer hard questions about what went wrong and how you can justify the budget for program renewal or other wellness programs in the future.

There is a strong chance you've implemented a random act of wellness strategy. How do you avoid such a costly mistake?

It comes down to understanding three criteria that should factor into each of your strategic decisions before you invest precious time, money, and energy:

- Desirability: Do the people we are serving want (need) this?
- Viability: Do we as a business want (need) this?
- Feasibility: Can we do this?

For example, imagine you're considering a wellness program focused on weight management.

Desirability means ensuring that your customers, i.e., the people you are serving with the program, need the solution. Is your population overweight or obese? If presented with the opportunity to engage in this program, would they want to? Would they be able to clearly envision the benefits in terms of what matters to them – their health, their finances, etc.?

An investment in a wellness strategy your population doesn't need or want would certainly qualify as a random act of wellness mistake. But it's one employers do make.

Viability means making sure that you as an employer want or need this wellness program. It is all well and good to serve your population, but if you don't consider the needs of the internal stakeholders, you're in for an uphill battle for budget, leadership buy-in, and operational support in terms of resources and time to ensure program success.

In our weight management program example, can the program advance the business's specific goals, whether financial, competitive, branding, operational, or cultural? Investing in a program that is Desirable but not Viable can kill it before you even get it off the ground.

Feasibility means making sure that you as an employer can do this. Both your population and your business may want it. But can it really be done? Are the operational resources in place? Would leadership provide the budget, sponsorship, or advocacy for it? Are there technological hurdles to overcome? Regulatory challenges? Does the timeline make sense? These are all important checklist items that, if not considered and managed, can blindside you and ultimately handicap your execution.

The Desirability, Viability and Feasibility framework can be applied not just to wellness programs but to any employee benefits strategies you may be considering, and even to broader HR or corporate strategies.

If you're interested in additional resources for applying this framework, you can visit this link or this one or tap into leadership at Peak Health, a wholly owned subsidiary of McGriff. To connect with Peak Health, contact your McGriff Employee Benefits account representative.

Nirav Desai
Managing Director - Peak Health
A Division of McGriff

FMLA Turns 30: Let's Get Back to Basics

For 30 years, HR professionals have been working with the Family and Medical Leave Act (FMLA), a federal law enacted to protect employees' jobs and medical insurance when they need to take unpaid time away from work for certain family and medical reasons. While FMLA has been around for a while, you may be new to the law because your organization has grown to the point where it only now applies to you or you've just had your first request from an employee for leave. Whatever your case, it never hurts to review the basics. FMLA can get pretty complicated, even for employers who have been granting and administering leave for years.

FMLA involves a lot more than job protection. There's handling paperwork, deciding whether the medical condition qualifies, whether leave will be taken all at once or intermittently, and what happens when the employee returns. Let's review some of the basic questions employers have about the law.

Are You a Covered Employer?

If you are an employer with 50 or more employees for at least 20 workweeks in the current or previous calendar year, you are subject to FMLA. Elementary and secondary schools are covered regardless of their employee count.

If you're a covered employer, you are required to hang the FMLA poster at your workplace where applicants and employees can see it—even if you don't have any eligible employees.

Which Employees Are Eligible?

An employee is eligible if they:

- Have worked for you for at least 12 months (not necessarily consecutively);
- Have worked for you at least 1,250 hours during the 12-month period immediately before the leave; and
- Work at a location where you have at least 50 employees within 75 miles.

Remote employees are considered to work at the worksite they report to and where their assignments are made from. An employee's personal residence is not a worksite for purposes of FMLA.

If you have any eligible employees, you are required to provide the information on the FMLA poster in your employee handbook or by distributing a copy to each new employee upon hire.

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What Can an Employee Take FMLA for?

Employees are entitled to take FMLA for the following reasons:

- The birth of a baby and to care for their newborn within one year of birth;
- The placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- To care for the employee's spouse, child, or parent who has a serious health condition;
- A serious health condition that makes the employee unable to perform the essential functions of their job;
- A qualifying exigency because the employee's spouse, child, or parent is a military member on active duty.

What Is a Serious Health Condition?

FMLA defines a serious health condition as an illness, injury, impairment, or physical or mental condition that involves either inpatient care or continuing treatment by a health care provider. Both physical and mental health conditions qualify for FMLA leave.

As far as continuing treatment, you may be surprised as to what is covered, especially when it comes to conditions that require intermittent care, such as mental health issues like anxiety or PTSD or recurring physical ailments like migraines or infertility.

You can find forms on the platform for employees to use with their providers to determine if their condition qualifies.

How Much Time Do Employees Get?

The total time allotted is up to 12 workweeks of leave per year (or longer for military caregiver leave, explained below). You get to define what a year is. You can use:

- Calendar year or another similarly fixed 12-month year;
- 12 months forward from the first date the employee starts FMLA; or
- Rolling 12 months, counting backwards from the date an employee uses FMLA.

Any of these methods are acceptable, just be sure to pick one and stick with it. If you don't identify your FMLA year, employees are entitled to use whichever year is most favorable to them.

Intermittent leave adds additional complexity to FMLA. Employees are entitled to take FMLA intermittently or on a reduced schedule when medically necessary. You want to be sure you are consistently tracking the time your employees take that qualifies for FMLA. You can find sample tracking documents on the platform.

What Does FMLA Say About Military Family Leave?

The caregiver of a military member with a serious injury or illness may take up to 26 workweeks of unpaid leave during a single 12-month period. You'll note that's a longer amount of time than the standard 12 weeks.

What Is Job Protection?

Job protection means an employer must return an employee who took FMLA leave to the same position they held when leave began or to an equivalent position. An employee is entitled to reinstatement even if the employee has been replaced or the position has been restructured to accommodate the employee's absence.

An equivalent position is virtually identical to the employee's former position in terms of pay, benefits, and other terms and conditions of employment. It must involve the same or substantially similar duties and responsibilities and require substantially equivalent skill, effort, responsibility, and authority.

If an employee is no longer qualified for the position (for example, they couldn't attend a necessary course or renew a license) because of the leave, the employee must be given a reasonable opportunity to become qualified again when their leave ends.

Are There Exceptions?

FMLA's only real exception is reinstatement of a "key employee." This is an employee who is salaried, FMLA-eligible, and among the highest paid 10% of employees within 75 miles. An employer may decline to reinstate a key employee if returning them to their position (but not continued absence) would cause substantial and grievous economic injury to the employer's operations. In this case, the employee is still entitled to take their FMLA leave and the employer has specific notice requirements. If you believe that the reinstatement may need to be denied, we recommend speaking with an attorney.

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What Paperwork Is Needed?

FMLA has rather involved paperwork requirements. We'll walk you through the paperwork for an initial leave request.

When an employee requests leave for a reason that might qualify for FMLA, the employer has five business days to provide notice about their FMLA eligibility, rights, and responsibilities. It's worth noting that the employee doesn't have to request FMLA leave per se, so it's important for managers to know the types of leave requests that can trigger FMLA. If the employee isn't eligible for FMLA, you can stop here.

If the employee is eligible, in most cases, the employer should provide a certification form and, if the leave is for the employee's own serious health condition, the employee's job description when they provide the notice of FMLA eligibility, rights, and responsibilities. You can require the employee to provide the requested certification within 15 calendar days after providing them the form, but would need to grant an extension if they try but can't meet that deadline.

Once you have enough information to know that the employee's leave is for an FMLA-qualifying reason, you have five business days to provide the employee a designation notice. This notice tells the employee whether their leave—and, if known, how much—will be counted as FMLA.

What Is the Right Way to Pronounce FMLA?

We'll refrain from staking out a definitive position on this controversial matter. Some employers pronounce FMLA "fem-la." Others "ef-em-el-a." Our advice is to pick one and, as always, be consistent!

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The COVID-19 Emergency Ends But the Work Continues

Change is on the horizon with a recent announcement from the Biden administration regarding COVID-19 policies. Of course, change and uncertainty have become regular facets of day-to-day life since the start of the pandemic in early 2020. While some aspects of life have resumed a sense of "pre-COVID normalcy," some shifts are still with us three years later. As time passes, it is hard to determine when the chapter of the pandemic characterized as an "emergency" should close.

For the federal government, the end of this chapter is coming soon. On January 30, the Biden administration announced it intends to end both the COVID-19 Public Health Emergency (PHE) and COVID-19 national emergency declarations on May 11, 2023. The Trump administration initially declared the emergencies in early 2020, and few could have imagined they would still be in effect today.

During the pandemic, lawmakers and regulators enacted coverage mandates and other measures as part of the government's COVID-19 response that impacted group health plans during the emergency declaration periods. As these policies sunset, employers should understand the impact on benefits plans and consider what steps are necessary to wind down the COVID protocols.

Public Health Emergency

COVID-19 Diagnostic Testing – During the PHE, group health plans and health insurance issuers are required to cover the cost of COVID-19 diagnostic tests and related services at no cost and without prior authorization or other medical management standards, including over-the-counter at-home tests. When the PHE ends, health plans and insurers will no longer have to provide no-cost COVID-19 diagnostic test coverage.

COVID-19 Vaccines – During the PHE, non-grandfathered group health plans and health insurance issuers are required to cover both in-network and out-of-network COVID-19 immunizations without cost sharing requirements. When the PHE ends, non-grandfathered group health plans and insurers will have to cover COVID-19 immunizations without cost sharing from in-network providers only.

COVID testing and vaccines will still have a place in virus defense after the PHE ends and plans may not want to decrease coverage. Employers should work with their carriers and administrators to determine to what extent coverage for these services will be provided when the PHE ends and communicate any cost or coverage changes to participants.

Telehealth Benefits – For plan years beginning during the PHE, Applicable Large Employers (50 or more employees) may offer standalone telehealth benefits to employees that are not eligible for group health plan coverage without violating the Affordable Care Act (ACA) market reform provisions. When the PHE ends, standalone telehealth benefits offered to employees not eligible for other group health plan coverage will subject the plan to potential ACA penalties for noncompliance with the market reform rules. Plans that are out of compliance after the PHE ends will be at risk for penalties up to $100 a day per affected employee.

National Emergency

While the PHE measures are still important aspects of virus containment, the relief tied to the national emergency has been impractical and administratively burdensome for some time. As a reminder, regulators at the start of the pandemic extended certain deadlines during an "Outbreak Period" that began on March 1, 2020. Scheduled to end 60 days after the announced end of the national emergency, the rules extend participant deadlines related to: (1) claims and appeals procedures for ERISA plans; (2) COBRA elections, premium payments and notices of qualifying events or disability; and (3) notices of HIPAA special enrollment events. Agency guidance clarified that these deadlines do not have to be extended for more than one year.

Winding down the administration of these deadlines will be just as challenging as having them in place. Assuming the national emergency ends on May 11 as planned, the Outbreak Period would end July 10. At that time, if individual deadlines have not already been extended by one year, the clock on those deadlines will begin to run in accordance with standard time frames.

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Employers should work with their vendors to ensure all necessary steps are taken to wind down the Outbreak Period and confirm vendors are prepared to administer the expiration of upcoming deadlines. Plan sponsors should also consider if they need to provide notice to participants about upcoming deadlines and if they need to update plan documents to accurately reflect the end of the Outbreak Period.

The COVID-19 PHE and national emergency have significantly impacted group health plans for three years and have required careful implementation and administration. As these measures now end, plan sponsors should continue to take steps to ensure compliance. Effective communication with stakeholders and prudent oversight will be key to ensuring compliance throughout the transition to the next chapter of life with COVID-19.

Chris Macali, JD
McGriff EB Compliance Officer

Borrowing Considerations to Fund Retirement Plan Liabilities

Pension sponsors often deal with fluctuating annual contributions and a funded status that never seems to improve. A troubling reality since a well-funded plan and predictable plan contributions would obviously be ideal.

A pension plan's annual contribution can be determined by considering the plan sponsor's funding policy (limited by ERISA's minimum contribution requirements). Nevertheless predictable annual contributions and a well-funded plan are both difficult to achieve. Even more so for under-funded plans.

When it comes to the more volatile under-funded plans, are fluctuating annual contributions the best strategy to improve the plan's funded status? Maybe there's a better way. Plan sponsors of any size, especially organizations with a strong balance sheet and debt capacity, may have an untapped resource that could help, i.e., the capacity to borrow.

First, consider a one-time, larger contribution that could be financed.

The amount might be determined as follows:

- The next five years (or some specific period) of plan contributions
- An amount to fully fund the PBGC variable-rate premium liability
- Half of the plan's current shortfall based on the funded status on the company's balance sheet

What are the benefits of a larger single contribution to the pension plan?

- Eliminating the minimum required contribution for a period of time, creating a contribution holiday
- Paying back the loan with fixed annual payments that are potentially less than current contributions
- A balance-sheet-neutral transaction, exchanging a variable pension debt for a fixed debt

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- A higher funded status that lowers investment risk by swapping volatile return-seeking assets for stable liability-hedging assets
- More benefit security allows additional de-risking action such as annuitization, or lump-sum settlements
- Increasing corporate earnings if the pension cost is lowered as a result of an immediate increase to plan assets
- Potentially lower PBGC variable-rate premiums
- Potential for taxable entities to deduct the borrowing costs

There are several considerations in evaluating whether a borrow-to-fund strategy is optimal:

- A large, financed contribution requires careful evaluation of the investment strategy for the plan, including the borrowed assets
- An organization's debt capacity may not be sufficient, or the company may need to keep some debt capacity for other business needs, such as acquisitions or capital improvements
- Taxable entities may want to delay a larger one-time contribution if higher corporate tax rates are expected soon
- Depending on a variety of factors, the contribution may not generate a significant reduction to the PBGC variable-rate premium

It takes careful analysis to see if a borrow-to-fund transaction is right for your plan. For certain plan sponsors, a larger one-time financially engineered contribution could be an advantageous tactic. This approach may create a positive outcome on the funded status of the plan and reduce risk. It can lead to lower cash flow commitments for the near future, a balance-sheet-neutral transaction, and improved earnings.

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

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We are conducting a webinar on March 21 at 2:00 pm ET to walk you through all of the Mineral tools and resources available to you – simply for being a valued partner of McGriff! Click HERE to register!

Six Cost-Cutting Tips for Small Businesses

Employers of all sizes are currently searching for ways to reduce expenses and save money in response to the current economic downturn and ongoing labor challenges. Instead of cutting costs randomly or conducting unnecessary layoffs, successful organizations tend to optimize their resources by identifying areas where they can reduce expenses without compromising productivity or future growth. While cutting costs is essential for any organization, it's especially important for small businesses since they tend to have fewer resources than larger employers.

This article outlines six tips to help small businesses effectively cut costs.

1. Invest in New Technology

Adopting new technology can bolster efficiency and create savings for small businesses. Investing in technology can help reduce costs by streamlining operations and allowing small businesses to operate more efficiently. Technology enables employers to improve or even automate manual and error-prone tasks. Examples of cost-saving technology include the following:

- Customer relationship management software
- HR management or information systems
- Digital communication
- Virtual recruiting services
- Low-code solutions
- Artificial intelligence
- People analytics technology
- Learning and development software

Additionally, many small businesses are turning to open-source software alternatives as a cost-effective alternative to brand-name software applications.

2. Strengthen Employee Retention

Prioritizing employee retention can be one of the most effective cost-cutting strategies for small businesses. Replacing workers is often extremely expensive. Employee turnover not only increases an organization's recruiting and training costs but also usually results in decreased productivity, lost proficiency and reduced profits.

Small businesses can strengthen employee retention with the following strategies:

- Provide opportunities for career development and advancement.
- Offer benefits to meet workers' evolving needs.
- Improve employee engagement by encouraging employee feedback, providing flexibility and strengthening workplace efficiency.
- Bolster workplace culture through public recognition and reward programs.
- Be transparent when communicating with employees to help them understand important decisions and establish opportunities for two-way feedback.

3. Manage Health Care Costs

It's not a secret that employer health care costs are rising. Finding cost-effective solutions is vital for small businesses to maintain affordable benefits and reduce

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costs. Solutions may include reevaluating plan designs and offerings, directing employees to cost-effective services and improving employee health care literacy. Employers can leverage their relationship with their insurance brokers to explore cost-saving solutions, like obtaining details on organizational health care spending and educating employees on shopping for health care services. By adopting several cost-cutting strategies, small businesses can better manage health care costs without sacrificing employees' needs.

4. Embrace Outsourcing

While performing tasks in-house can often be cost-effective, there are instances when outsourcing nonessential tasks can be more economical. Manual, time-consuming tasks—such as payroll and benefits administration—may be better suited for outsourcing for some organizations. Outsourcing these kinds of tasks can enable employees to focus on more important responsibilities that have a greater and more direct impact on a small business's bottom line and future growth.

5. Adopt Flexible Work Arrangements

The expense of having a physical workspace can add up. Each month, employers must pay rent, utilities, cleaning costs and other expenses. While these expenses are often unavoidable, some small businesses are transitioning to home-based businesses or remote and hybrid work arrangements to cut costs. These solutions may not be suitable for all industries or job positions, but small businesses of all kinds can explore ways to offer flexible scheduling and improve benefits, like enhanced leave and paid time off, to lower overhead expenses. If converting to a home-based business or going remote isn't possible, employers can consider downsizing their facilities to reduce their rent and utility bills. Small businesses can also explore other alternatives, such as co-working arrangements and renegotiating their leases, to reduce rent.

6. Review Expenses

Poor cash flow can strain and even jeopardize an organization's longevity. Reviewing expenses regularly can be an effective way to reduce and eliminate unnecessary costs. As part of the review process, employers can negotiate with providers, suppliers and vendors, such as banks and landlords, to potentially defer payments, reduce fees, improve rates and receive additional services to help during difficult times. By establishing and fostering relationships with these individuals and entities, organizations can cultivate allies and acquire strategic partners, which can pay dividends by creating cost-savings solutions and opportunities.

Summary

Effective strategies for cutting costs will likely vary for each small business. However, by planning properly and understanding effective cost-cutting approaches, small businesses can identify and reduce the costs that will have the most impact on their organizations. This can help small businesses bolster their financial stability, optimize their resources and position themselves for future growth.

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