

# It Benefits You Your Employee Benefits Newsletter

August 2022

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There seems to be a holiday for everything these days and August - also known as Happiness Happens month - holds a few observances we can get behind. For starters, Aug. 26 is National Dog Day. But the first week of the month, Simplify Your Life week is our favorite. At McGriff, we aim to simplify your life by offering proven solutions for complex problems. Whatever you're facing, when it comes to managing employee benefits, you can count on us all year long. Reach out to your McGriff consultant today and let us know how we can help simplify your life!

## JOIN US: Key Steps and Considerations Before Initiating a Ben Admin Technology Search

August 25 | 2:00 pm EDT | 1.0 SHRM PDC

To register, please [click here](#).

Searching for benefits administration technology is often a daunting task. With over 400 technology and service providers in the market, the process can be time consuming and overwhelming. Join your McGriff Benefits Administration Technology Team to learn key steps and considerations that can help streamline the process.

## Upcoming Compliance Deadlines

### September Summary Annual Report



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, 2022. However, if an extension to file Form 5500 is obtained, then the plan administrator must furnish the SAR within two months after the close of the extension period.

There are some exceptions to this rule! Plans that are exempt from the annual 5500 filing requirement are not required to provide a SAR. Large, completely unfunded health plans are also generally exempt from the SAR requirement.

### 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, 2022.

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.

## Travel Reimbursements for Legal Abortion Care

Following the U.S. Supreme Court decision in [Dobbs v. Jackson Women's Health Organization](#), a number of employers announced they would reimburse travel expenses for employees seeking to travel out of state for a legal abortion. There are a number of different options for employers to consider when structuring a travel benefit, with each option having its own compliance challenges.

Employers may be able to reimburse medical travel expenses tax-free through an employee benefit plan, such as a group health plan, a health reimbursement arrangement (HRA) or an employee assistance program (EAP). Due to ERISA's preemption clause, this approach may help protect employers from state civil laws that prohibit "aiding and abetting" actions related to abortion care. However, employers must abide by certain restrictions that limit the scope of this benefit.

Another option for employers to consider is a standalone program that reimburses travel expenses on a taxable basis. While this approach gives an employer more flexibility, these programs need to be carefully structured to avoid violating

the Affordable Care Act (ACA). Also, this approach does not offer any ERISA preemption protection from state "aiding and abetting" laws. To address these concerns, employers should consider programs that reimburse wellness-related travel expenses, and are not specifically for abortion or medical care.

### Action Steps

Employers who want to reimburse travel expenses for abortion care should work with their advisors to pick the most suitable option for providing the benefit. If an employer wants to provide the benefit on a tax-free basis through an employee benefit plan, they should consult with their third-party administrator or plan vendor to determine whether they can administer the benefit.

### Travel Benefits for Abortion

A growing number of employers—including those operating in multiple states or with employees working remotely

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throughout the U.S.—have announced that they will be reimbursing travel expenses for employees to access legal abortion care. There are a number of different ways for an employer to provide travel benefits, each of which comes with its own compliance concerns.

Pursuant to Section 213(d) of the federal tax code, employers can provide medical travel benefits on a tax-free basis through an employee benefit plan, such as a group health plan, subject to specific dollar limits and rules for the reimbursements.

### Limits on Tax-free Reimbursements

Travel for medical purposes can be provided as a tax-free benefit when it is “transportation primarily for and essential to medical care.” It can include, for example, reimbursement of mileage, transportation (such as buses, trains, airplanes and rental cars), and hotel costs up to \$50 per individual per night. In general, meals cannot be reimbursed on a tax-free basis. Also, any companion travel benefits are limited to “necessary” companion travel. Reimbursements in excess of these limits would be considered taxable wages, subject to income tax and withholding.

Alternatively, employers who want more flexibility may decide to implement a separate program for taxable reimbursements of travel expenses, although this approach requires careful planning.

### State Laws – Possible Impact

In the wake of the Dobbs decision, state laws regarding abortion are expected to continue shifting as new legislation is passed and legal challenges are decided. Employers should carefully monitor applicable state laws regarding abortion to understand their legal obligations. Some of these laws may impact employers, such as laws that ban or restrict insurance coverage for abortion or require fully insured health plans to cover abortions.

Certain states (such as Oklahoma and Texas) allow individuals to bring civil lawsuits against anyone who assists in the performance or inducement of abortion, including paying for or reimbursing the costs of the procedure through insurance or otherwise. In states like Texas and Oklahoma that bar “aiding and abetting,” it remains to be seen how these laws will apply to employers providing benefits for their employees to receive legal out-of-state abortions, including reimbursement of travel expenses. ERISA may preempt state civil “aiding and abetting” laws to the extent that benefits

are provided through an ERISA-covered employee benefit plan. However, this is an open issue and will likely need to be decided in court.

## Employee Benefit Options

### Group Health Plans

The most straightforward way for an employer to provide travel benefits for medical care is through its existing group health plan. Employers with self-insured health plans may be able to expand coverage to cover medical travel for legal abortion care. However, this may not be an option for employers with fully insured health plans because they are limited to the coverage offered by their carriers. Also, fully insured health plans (unlike self-insured health plans) are subject to state insurance laws, which may restrict or prohibit abortion-related benefits. Even if an employer can expand its group health plan to include medical travel for legal abortion care, there are some challenges with this approach, such as:

- Only employees (and dependents) who are enrolled in the health plan may be eligible for the travel benefit;
- Limiting the travel benefit to abortion care may violate federal laws that require parity between medical benefits and benefits for mental health and substance use disorders; and
- If the plan is a high deductible health plan (HDHP), enrollees will likely need to satisfy the minimum deductible before receiving the travel benefit.

### HRAs

Another way to provide tax-free travel reimbursements for medical care is through an HRA—either an HRA that is integrated with the employer’s group health plan or an excepted benefit HRA (EBHRA). However, both of these options have design limitations, including the following:

- With an integrated HRA, only employees (and dependents) enrolled in the employer’s group health plan may be eligible for the travel benefit.
- EBHRAs can reimburse eligible expenses of all benefits-eligible employees, even if they declined enrollment in the employer’s group health plan. However, EBHRAs cannot be used to pay for expenses of employees who are ineligible for the employer’s group health plan (for example, part-time employees).

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- Coverage under an EBHRA is subject to an annual limit (\$1,800 for 2022 and \$1,950 for 2023), which can restrict travel reimbursements.
- HRAs are usually disqualifying coverage for HSA purposes, which means that this approach for providing travel benefits may not be suitable for employers with HDHPs.

## EAPs

Employers may also consider providing medical travel reimbursements on a tax-free basis through an EAP that qualifies as an “excepted benefit” under the ACA. With this option, travel reimbursements can be provided to all employees and dependents, not just those enrolled in the employer’s group health plan. Also, as a general rule, employers with HDHPs can offer EAPs without jeopardizing their employees’ eligibility for HSA contributions. However, because EAPs do not typically provide medical travel benefits, employers interested in using this approach should consult with their EAP vendor to determine if they can administer this benefit.

Also, note that the EAP benefit will need to be structured carefully to ensure that the EAP qualifies as an excepted benefit under the ACA. To qualify, the EAP cannot (1) provide significant benefits in the nature of medical care; (2) be coordinated with benefits under another group health plan; (3) require employee contributions; and (4) require any cost-

sharing. Based on existing guidance, it is unclear whether medical travel benefits—in addition to any other benefits provided by the EAP—would be considered significant benefits for medical care.

## Standalone Travel Reimbursement Programs

Employers who want more flexibility may decide to implement a standalone program to provide taxable travel reimbursements. This approach allows employers to set their own eligibility rules and reimbursement limits. However, by reimbursing expenses outside of an employee benefit plan, the employer cannot rely on ERISA’s preemption provision for state laws restricting or prohibiting abortions, including “aiding and abetting” laws.

Moreover, these standalone programs must be carefully structured to minimize the risk of inadvertently creating an “employer payment plan” that would violate the ACA’s market reforms. Employers should be able to minimize the risk by implementing a wellness travel reimbursement policy that is not specifically linked to medical or abortion care. Although this type of program would likely be more costly for the employer, it would help protect employees’ privacy because employers would not need to know the exact reason for the travel. Similarly, a wellness travel reimbursement program would help protect employers against state laws regarding “aiding and abetting” abortion care.

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## Making the Most of Job Interviews

When interviewing job candidates, time is critical. Let’s look at some basic practices that will enable you and your job candidates to make the best use of this time.

The time you spend talking to candidates adds up quickly, especially if you have a lot of great candidates. That has a cost—you’re not getting other important work done. That time also goes by incredibly fast. Within the span of a brief discussion, you have to gather the information you need to make an informed hiring decision and to sell the role to a potential hire. And don’t forget you’re competing with other employers eager to snatch up talent. Every minute counts.

Wasting time also amounts to a bad experience for candidates. Aside from the fact that they have other things going on in their lives, you will be asking at least one of them to make a good decision, too. A bad decision, on your part or theirs, will likely result in you both parting ways sooner rather than later, compounding the cost of filling the role.

Let’s look at some basic practices that will enable you and your job candidates to make the best use of this time.

**Before you conduct any interviews, document what the job entails and what core competencies will be needed to do it.**

Interviews are not the time to clarify what you want the job to be. If you go into interviews fuzzy about the functions of the job, you won’t be able to assess whether and how well candidates can perform.

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**Include questions about specific occasions when candidates used those competencies and what the outcome was.** For example, if the job you're hiring for will involve regularly de-escalating tense situations with irate customers, you might ask candidates to tell you about a time in which they were able to calm an irate customer. This method of questioning—called behavioral interviewing—cuts to the chase. You not only get an affirmative or negative answer as to whether the candidate possesses the competencies you need, but also obtain verifiable evidence (or not) that they've previously done what they say they can do. For behavioral questions to be most effective, pose the same questions to each candidate and evaluate their responses using the same criteria.

**Put your interview team together (if really needed) and coordinate who's asking what.** If the person you hire will be working with multiple people, each with a unique stake in the work being done, it may be prudent to involve some of these employees in the interview process. If several employees will be participating in the interviews, meet with them ahead of time to formulate a plan so there's no unnecessary overlap in the questions you'll each be asking.

**Connect each response to what's needed for this new job.** After a candidate has answered each question, take a brief moment to explain how this new job may be both similar to and different from what the candidate did previously. For example, if a previous role required them to complete five projects per week, and the new role would require them to complete a greater or fewer number of similar projects, mention that.

The purpose of doing this is to give the candidate a clear picture of the tasks and challenges they can expect in the role so they know what to anticipate if they eventually accept a job offer. There's also a reason why now is an opportune time to make this connection. When a candidate is reflecting on a previous instance that required the competencies you need, they're likely remembering how they felt at the time. Maybe they were energized. Maybe they hated the experience and vowed then and there to quit as soon as they could. Whatever the case, eliciting these feelings serves your interests and theirs—yes, even if it prompts their immediate departure from the candidate pool. The last thing you want is to hire someone who either can't do the job or finds themselves unhappy doing it. You're not just filling a role. You're seeking the person who can be the most successful in it.

**Don't ask cute or clever questions.** They're a waste of everyone's time. You're almost certainly not going to learn anything useful by asking candidates what dessert they would be, how they'd plan a trip to the moon, or whether they prefer cats or dogs. Asking candidates to solve a made-up problem on the spot might yield interesting information, but unless the job involves a lot of unprompted problem-solving with no time to prepare, you're better off asking candidates something else.

**Keep questions job related.** Okay, we said earlier that the last thing you want to do is to hire the wrong person, but that's not necessarily the worst thing that can happen. A bigger mistake than a bad hire is a hiring decision that nets you a costly discrimination claim. For example, if the job has a legitimate age requirement (such as operating machinery or serving alcohol), asking "How old are you?" will likely give rise to an age discrimination claim. Instead, just ask if they're at least 18 years old (or whatever the required minimum age is).

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# Quit Talking – And Start Communicating!

We are more than halfway through 2022 – a year that seemed promising for business leaders just a few short months ago but now seems destined to go down as yet another year of hair-raising challenges.

As an executive/manager it may seem overwhelming trying to determine priorities when there are so many competing for your attention. Diversity, equity and inclusion initiatives. Social and discrimination issues related to sexual orientation, gender identity and related topics. Cost of living and inflation concerns. The landmark U.S. Supreme Court decision overturning *Roe v. Wade*. Just to name a few. Where do you start?

Ignoring the “if everything is a priority, then nothing is a priority” adage, too often we try to tackle everything at once. But, what is the one thing all employee and business concerns have in common? The one thing companies **MUST** do well in order to address issues in the workplace and, at the same time, bring order to the chaos that often ensues when employees are uninformed?

## **Employee communication.**

We’ve never had as many ways to communicate as we have right now. Yet most CEOs cite a lack of communication as their No. 1 problem in the workplace. How can that be?

Most likely, it’s not really a lack of communication in general, but rather a lack of effective employee communication that has become our stumbling block. We speak, write, text, email, tweet and Tik-Tok continuously, yet misinformation – and sometimes embarrassing silence – abounds when it is most important for messages to be received and understood.

With so much going on in the workplace, leaders must master the basics of clear, concise – and properly delivered – communication.

Below are three strategies to help us become better communicators:

**1. Know your audience.** Do you really know how your employees process information? Are they more comfortable with the written word? Or do they respond and understand more clearly when they hear the message directly from the mouth of their manager? When you craft employee communications without thought to the most

effective delivery method, you’ve only done part of your job as a communicator. Using various styles and forms of messaging may be the best way for your communications to be received.

- 2. Communicate early and often.** When employees are not told the whole story, they’ll make up the details. The less informed an employee is regarding important business decisions, changes and policies, the less engaged – and loyal – they will be. While there are instances where information must be withheld (legal reasons, for example), often we wrongly decide that employees don’t really need to know. Employees talk among themselves. They hear things through the workplace grapevine and sometimes on social media or traditional news. Better that they get accurate information from their managers and executives than through less reliable sources.
- 3. Keep communication lines open.** When employees experience change in the workplace – on top of all the change happening in the world around them – open communication channels are vital. Ask for feedback! Make sure you provide an easy way for employees to ask questions and receive answers in a timely manner. For example, if at all possible don’t make a big announcement on a Friday afternoon so that employees have the entire weekend to fret about it and no one in authority available to address their concerns. When workers know their fears, concerns and protests are heard, they are more likely to accept the message (and any possible changes) and less likely to feel unimportant and ignored.

In a world fraught with unusual change, employers have a great opportunity to ease anxiety in their employees through timely and straightforward communication. Even if you don’t have all the answers, addressing concerns as they occur will make employees feel more secure. In a world of uncertainty, security ranks high.

Too often ignored and generally under-appreciated, well executed employee communication is an indispensable business strategy. In all times, but especially in our time of rapid and sometimes unsettling change. Stop just talking and start communicating effectively.



**Janie Warner**

McGriff HR Advisory Practice Leader

## 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 obviously would be ideal.

The annual contribution for a pension plan 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 be failing to take advantage of an untapped resource, 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
- A higher funded status that lowers investment risk by swapping volatile return-seeking assets for stable liability-hedging assets
- More benefit security leads to additional risk mitigation strategies, such as annuitization, or lump-sum settlements
- Higher 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

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

- 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 will make sense. 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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## Is a Lifestyle Spending Account Worth Adding as an Employee Benefit?

When it comes to attracting and retaining employees, benefits have always played a vital role. In this very competitive environment, employers are looking beyond standard medical, dental and vision benefits to perks such as Lifestyle Benefit Accounts (LSAs).

An LSA is an employer-funded, taxable benefit designed to promote employee wellness, happiness and productivity. They're designed to address physical, financial and emotional wellness needs.



PHYSICAL WELLNESS	FINANCIAL WELLNESS	EMOTIONAL WELLNESS
Athletic equipment and accessories	Student loan reimbursement	Mediation classes
Exercise/fitness equipment	Home purchase expenses	Non-medical counseling Services: marital, parental, etc.
Gym, health club, spa and fitness studio membership	Financial advisor and planning services	Retreats: leadership, spiritual
Sport lessons: golf, swimming, tennis, dance, etc.	Financial seminars and classes	Pet care: walkers, day care, grooming
Workout apps, fitness trackers	Estate planning costs	Camping: tent, site rental fees, sleeping bags, etc.
Weight loss programs, nutrition counseling, food supplements	Identity theft services	Personal development classes: art, cooking, sewing, etc.
Entry fees for races and sports leagues	Pet insurance premiums	Annual park pass
Fitness classes: yoga, Pilates, cycling, etc.		Hunting and fishing licenses
Passes: ski, snowboard, golf, tennis, etc.		

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A Lifestyle Spending Account allows employees to make purchases and receive a reimbursement from their LSA. The employer determines which expenses are eligible and the funds are considered as taxable income to the employee. An LSA should not be used for IRS Section 213(d) health expenses.

### ***LSA Program Options***

Employers have several options when customizing their LSA, such as:

- Which plan types to offer (physical, financial, emotional)
- How much to contribute
- When contributions will be available for use
- Eligible employees
- Eligible expenses
- How funds will be handled at the end of the plan year (rollover or runout)
- How funds will be handled for terminated employees (runout period)

### ***Benefit to Employers and Employees***

A valuable addition to a standard benefit program, LSAs let employees choose activities that suit their lifestyle, with more control over how they use the benefit. For example, remote employees could buy exercise equipment for home or sign up for a nearby fitness class.

For employers, the LSA is a highly flexible offering that increases employee engagement and improves the overall benefits plan. It can differentiate the employer, making it more attractive to both current and prospective employees.

For more information on Lifestyle Spending Accounts, please contact your Employee Benefits advisor.



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## McGriff August Webinar Opportunities

As part of our commitment to bring you information on regulatory updates, current trends and best practices, we invite you to explore our webinars scheduled for July. We hope you can join us for one or more of these educational opportunities!



### Employee Benefits Issues Post-Dobbs

**August 10 | 12:00 pm EDT** To register, please [click here](#).

**August 23 | 3:00 pm EDT** To register, please [click here](#).

On June 24, 2022, the U.S. Supreme Court issued its highly anticipated decision in *Dobbs v. Jackson Women's Health Organization*. The *Dobbs* decision expressly overrules a constitutional right to abortion and gives states the authority to regulate abortion. The *Dobbs* decision creates a host of considerations for employers with regard to employee benefits. In this webinar, we will provide an overview of the issues and options for employers, including the new guidance issued under the HIPAA Privacy Rule setting protections for access to private medical information relating to abortion and other sexual and reproductive healthcare.

### Monthly Mineral Demonstration

**August 16 | 2:00 pm EDT**

To register, please [click here](#).

McGriff is excited to bring you Mineral (formerly ThinkHR) – 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 a brief overview of Mineral and its benefits available to you as an employee benefits client of McGriff.

### Tips for Developing and Sustaining Strong Safety Leaders

**August 18 | 2:00pm ET | 1.0 SHRM PDC**

To register, please [click here](#).

Now more than ever, strong leadership at all levels of an organization is critical for a highly functioning safety culture and improved safety performance. We will cover the fundamental safety leadership qualities, competencies, commitments, and accountabilities needed to develop your leadership team and inspire a continuous proactive safety environment. Presented by Brandon McCosh, Risk Control Consultant with McGriff.

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