



It Benefits You

Your Employee Benefits Newsletter

December 2023

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As we flip to the last page of the calendar, we reflect on another eventful year. In 2023, we focused on mental health and well-being, rapidly evolving technology, the continuing impact of long COVID on claims analytics, recruiting and retention, and effective risk management strategies.

The pace of regulatory change has certainly not slowed. But if you're like us, and we know you are, December does not mark an ending. After evaluating the past year, we know you're already busy setting a course for what lies ahead in 2024.

We're privileged to partner with you to forecast, plan, deliver, and evaluate employee benefit strategies aligned to the goals of your organization. As the calendar rolls from one month to the next, we thank you for the opportunity to continue this journey with you. And we hope you have a wonderful holiday season and a happy new year!



Brian Patterson
McGriff National Leader
TPA and Specialty Solutions

McGriff Brings You Mineral!

December 19 | 2:00 p.m. EST

McGriff is excited to give our Employee Benefits clients access to MINERAL – a robust web-based HR and compliance resource! Through your McGriff relationship, you have access to **Mineral Live**, a team of HR experts standing by to answer your questions or provide advice on virtually every HR or compliance-related issue; **Mineral Comply**, an award-winning online resource center for all of your workforce issues, including a Living Handbook Builder; and **Mineral Learn**, an incredible online training platform with more than 250 web-based courses for your employee training needs.

Join us to learn about these exciting features and many more within your McGriff-provided Mineral account!

[Register](#)

Upcoming Compliance Deadlines

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Summary Annual Report (SAR) Extended Deadline for Calendar Year Plans

A Summary Annual Report (SAR) summarizes a plan's Form 5500 annual report, provides a financial statement regarding the plan, and informs participants of their rights to receive additional information.

Generally, the plan administrator provides the SAR within nine months of the close of the plan year; 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. For calendar year plans, that deadline is December 15.

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Initial No Gag Clause Attestation Deadline

The Consolidated Appropriations Act of 2021 (CAA) prohibits plans and issuers from entering into agreements with health care providers, third-party administrators (TPAs) and other service providers that would restrict the plan or issuer from providing, accessing or sharing certain information about provider pricing and quality of care as well as de-identified claims.

Plans and issuers must annually submit an attestation of compliance with these requirements – or “Gag Clause Prohibition Compliance Attestation (GCPCA)” – using the Centers for Medicare and Medicaid Services’ (CMS) Health Insurance Oversight System (HIOS).

The first attestation, covering the period beginning December 27, 2020 through the date of the attestation, must be filed by December 31, 2023.

McGriff recorded [a short tutorial](#) to assist employer group health plan sponsors if their carrier/TPA is not willing to complete the GCPCA on their behalf.

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Form W-2 Reporting Cost of Employer-Sponsored Health Coverage

Under the ACA, employers who issued 250 or more W-2s in the prior calendar year are required to provide employees with the aggregate cost of employer-sponsored group health plan coverage on employees' Forms W-2. Currently the reporting is optional for employers who file fewer than 250 W-2 forms.



An Employer's Guide to Planning a Holiday Party

Workplace holiday parties are experiences that many employees look forward to each year. They are a fun way to end a challenging work year and celebrate with those who employees have spent the majority of the year with. Holiday parties are also a great way to hold tradition within your workplace and allow colleagues and even guests to celebrate one another's accomplishments.

There are several benefits to offering a holiday party. Offering a holiday party could help with employee retention or even help build camaraderie in the workplace. They also provide an opportunity to build

(Continued)

workplace culture outside of normal office hours or just give a break from the standard workday. However, there can also be high costs and a level of risk associated with these events, including inappropriate behaviors and lack of inclusivity. Therefore, thorough consideration of many aspects is critical.

There are a variety of ways employers can host a workplace holiday party, and there's a lot that goes into properly planning the event in order to stay within a budget and avoid liabilities. Whether the party is virtual, at your workplace or at a venue, it's necessary to take proactive steps and plan accordingly. This can include coordinating and organizing several aspects, such as invitations, attendance, catering, external relations and budget, to name a few.

How your organization chooses to run a holiday party is unique to what fits your workplace best. For example, your workplace could host a virtual event, include families, have an ugly sweater contest or sponsor a charitable gift. The way a workplace holiday party is hosted is customizable to the event. This [Employer's Guide to Planning a Holiday Party](#) is a resource that can help employers like you plan your organization's next or first-ever holiday party. This guide is not exhaustive but does cover key steps employers can consider when planning such an event.

This Guide is reprinted with permission from Zywave.com.

McGriff Affordable Care Act (ACA) Reporting Toolkit: 2023 1094-C / 1095-C Forms

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

McGriff has updated its comprehensive ACA Reporting Toolkit to assist with the many questions that arise for employers when completing these requirements, both when reporting on their own as well as when coordinating with their chosen reporting vendor.

The [McGriff ACA Reporting Toolkit](#) includes:

- a review of the Employer Shared Responsibility mandate;
- a review of the fundamentals of ACA reporting requirements;
- a step-by-step guide to completing the IRS 1094-C and 1095-C forms;
- deadlines for IRS filing, as well as furnishing forms to individuals;
- numerous examples of common scenarios for coding 1095-C forms; and
- an overview of state reporting requirements.

NEW: Electronic filing now required for most employers! On February 23, 2023, the IRS released a final rule lowering the 250-return threshold for mandatory electronic reporting to 10 returns (aggregated count includes all information returns). This means almost every employer is now required to complete their ACA reporting electronically.



Click on the image above
to access the toolkit.



By Laura Clayman, JD, SHRM-CP
McGriff EB Compliance Officer

Also, since the IRS no longer offers good faith transitional relief for errors in coding these forms; so, it is important that employers make sure that all codes are accurate and that forms are filed with the IRS and furnished to full-time employees in a timely manner. The McGriff ACA Reporting Toolkit provides helpful guidance for meeting these requirements!

Don't Forget State Individual Mandates and Reporting Requirements!

While health insurance is no longer required at the federal level, an increasing number of jurisdictions, including California, Massachusetts, New Jersey, Rhode Island and Washington, D.C., have enacted their own individual mandates requiring residents to maintain qualifying health coverage or face a state tax penalty.

What this means for employers is that, besides any federal reporting obligations you may have under the Affordable Care Act, you may have [state reporting requirements](#) as well:

Jurisdiction		Distribution to Employees	Reporting to the State
California	What:	Federal 1095-B or 1095-C	Federal 1094/1095-B or 1094/1095-C
	When:	January 31, 2024	April 1, 2024 (no penalty through May 31, 2024)
Massachusetts	What:		Health Insurance Responsibility Disclosure
	When:		December 15, 2023
	What:	Form MA 1099-HC	Form MA 1099-HC
	When:	January 31, 2024	January 31, 2024
New Jersey	What:	Federal 1095-B or 1095-C or State NJ-1095	Federal 1095-B or 1095-C or State NJ-1095
	When:	March 1, 2024	April 1, 2024
Rhode Island FAQs	What:	Federal 1095-B or 1095-C	Federal 1095-B or 1095-C or State File
	When:	March 2, 2024	April 1, 2024
Vermont	Individual Mandate but currently no employer state reporting requirement		
District of Columbia	What:	Federal 1095-B or 1095-C	Federal 1094/1095-B or 1094/1095-C
	When:	March 1, 2024	May 1, 2024

Employers should proactively assess whether they have employees residing in a state with an individual mandate and carefully determine whether they have state-specific obligations.

For fully insured plans, the health coverage provider (insurer) will often complete this reporting on behalf of the employer. However, since it is ultimately the employer's responsibility to ensure compliance, employers must confirm the state's specific requirements and the insurer's role well in advance of the filing deadlines. Self-funded employers are responsible for their own state reporting.

As more states enact state individual mandates, employers should continue to be alert for additional guidance.



By Christy Showalter, JD, MBA
McGriff EB Compliance Officer

New Transparency FAQs Announce End of Enforcement Relief for MRFs

The Transparency in Coverage Rules require non-grandfathered health plans and issuers to disclose on a public website detailed pricing information in three separate machine-readable files (MRFs). Specifically, the following MRFs are required:

- In-network Rate File: In-network, provider-negotiated rates for covered items and services;
- Allowed Amount File: Historical payments to and billed charges from out-of-network providers; and
- Prescription Drug File: In-network negotiated rates and historical net prices for covered prescription drugs.

On Sept. 27, 2023, the Departments of Labor, Health and Human Service and the Treasury (Departments) issued [Frequently Asked Questions \(FAQs\)](#), ending certain enforcement relief related to the transparency requirement for posting machine-readable files (MRFs).

- Non-grandfathered health plans and issuers must publicly post three MRFs regarding in-network provider rates, out-of-network allowed amounts and billed charges, and prescription drug rates and prices. Most employers rely on their insurance carriers and third-party administrators to provide and post the MRFs.
- The Departments have ended an enforcement delay for posting the prescription drug file. Future guidance will specify a timeline for complying with this requirement. Note: This is a separate and distinct requirement from the RxDC reporting under the Consolidated Appropriations Act of 2021.
- The Departments have also ended an enforcement safe harbor related to disclosing certain in-network pricing.

Plan sponsors should be on the lookout for more information and a timeline for compliance from the Departments.

EB Compliance Checkup

Can we pay for executive physicals?

Can employers provide physicals for their executives? Yes, but as with most things in benefits, you'll need to think through the compliance considerations. **Unfortunately, it's not as easy as just reimbursing or paying the cost of the physical.**

Although it seems like a small thing, simply paying or reimbursing for the cost of a physical would actually create a group health plan subject to ACA market reforms, since a physical is considered medical care. This plan would not satisfy ACA rules on a standalone basis (e.g., the preventive services coverage mandate, the prohibition against annual limits, etc.). And keep in mind the plan would also need to comply with other laws that apply to group health plans, e.g., ERISA and COBRA).

That said, there are a number of possible plan design options that may work for you. *We have summarized the most popular ones in the bulleted section below, but you will want to work closely with your company's employee benefits counsel to ensure the design avoids potential compliance potholes.* This is particularly true for a design intended to meet the medical procedure diagnostic exception under the nondiscrimination provisions for self-funded group health plans found in tax code section 105(h).

- *Provide executive physicals through your self-funded major medical plan and rely on the special rule exempting diagnostic tests from 105(h) nondiscrimination testing.* To meet this



exception, the physical must be performed at a facility that provides only medical or ancillary services and must only include routine medical examinations, blood tests, X-rays, or similar tests. Associated procedures cannot be for the treatment, cure, or testing of a known illness or disability, or the treatment or testing for a physical injury, complaint, or specific symptom of a bodily malfunction.

- *Create an HRA to reimburse the executive physicals for the selected executive population.* To satisfy ACA rules (and ease compliance with ERISA and other applicable regulations) the HRA must be integrated with a compliant group health plan. Most employers do this by integrating it with their existing self-funded major medical plan. Once again, you would need to design the plan so that it could rely on the special rule exempting diagnostic tests from 105(h) nondiscrimination testing (since HRAs are generally self-funded group health plans

subject to 105(h) nondiscrimination testing).

- *If you offer an HDHP and facilitate HSA contributions, then raise the selected executive population's pay with the idea that they can contribute more to their HSA and use it to pay for the physicals.* While you cannot require the funds contributed to the HSA be used for the executive physical, this approach would allow executives to pay for them on a pre-tax basis and the physical itself wouldn't have to satisfy the rules exempting diagnostic tests from 105(h) nondiscrimination testing.

Keep in mind that, depending on the approach you take, there may be additional action needed, such as plan amendments/plan documents, SPDs/SMMs, etc.

What if you want to go beyond the executive physical to provide supplemental medical coverage for executives? In that case, there are a number of carriers that specialize in the area. To provide this type of coverage, *you generally must do so through a fully insured product to avoid self-funded group health plan nondiscrimination testing issues* under tax code section 105(h). However, these plans generally can avoid cafeteria plan testing issues since they are typically fully paid by the employer.

That said, there are a number of other compliance hurdles with these products. For example, most of these plans are considered an 'excepted benefit,' meaning they're unaffected by ACA requirements. In particular, these plans are often designed to fit under the excepted benefit category of similar supplemental insurance coverage. In that case, the safe harbor rules require that the coverage:

- Be fully insured (and there must be a real shift of liability to the carrier)
- Fill gaps in the primary coverage

- Not exceed 15% of the cost of primary coverage
- Not differentiate among individuals in eligibility, benefits, premiums based on any health factor of an individual

In the end, the determination of whether or not a plan is an excepted benefit is based on very specific facts.

If you want to provide supplemental health coverage to your executives rather than merely providing a physical, be sure to do your compliance-related due diligence with the potential vendor. You'll want to ask whether the proposed plan intends to qualify as an excepted benefit or otherwise for ACA compliance purposes.

Make sure the vendor provides relevant materials showing why they believe the plan meets the criteria to qualify. Even then, given the fact-specific nature of compliance in this area, you'll likely want to run the program by your company's employee benefits counsel to make sure they're comfortable with the approach. Counsel can also provide guidance on other potential compliance considerations (e.g., top hat status for ERISA purposes, applicability of COBRA and so on).plan meets the criteria to qualify. Even then, given the fact-specific nature of compliance in this area, you'll likely want to run the program by your company's employee benefits counsel to make sure they're comfortable with the approach. Counsel can also provide guidance on other potential compliance considerations (e.g., top hat status for ERISA purposes, applicability of COBRA and so on).



By Stacey Stewart, JD, LLM in Taxation
McGriff EB Compliance Officer


Holiday Q & A: Ask the Experts!

Question: What should we do when one of our designated paid holidays falls on a weekend when we aren't open? Do we need to offer an alternative day off?

Answer: No, you don't need to offer an alternative day off. There are no federal laws requiring private employers to provide paid time off for holidays. However, there are potential benefits to offering an alternative day off:

- It can boost employee morale. Employees won't feel that they "lost" a day off—and three-day weekends are always appreciated!
- It may save you from having to process a host of time-off requests for weekdays around that holiday.
- It communicates your commitment to work-life balance, an important factor for engagement and retention.

This Q&A is brought to you by our strategic partners at Mineral.



A mid-sized company that wanted to incentivize their executive management team to help expand and grow their business engaged McGriff's Retirement Consulting practice.

Case Study: Executive Retirement and Retention

Client Profile

The family-owned business with 300 employees was founded in 1908. Family members led the organization through most of its history until they began hiring executives from other firms in their industry about 20 years ago. The current senior leaders are mid- to late-career hires who are not family members and therefore do not have the same ties to the company that fostered retention in the past.

The company hired McGriff's Retirement Consulting practice to assess and recommend changes and improvements to the company's executive retirement/deferred compensation program.

Challenge

Conversations with majority owners and board members revealed that:

- Supplemental executive retirement programs (SERPs) were in place for two key sales executives.
- Other key positions were not covered by similar non-qualified programs, including the CEO, CFO, and Human Resources VP.
- The company wanted to enhance retirement security for the two previously covered positions and the three uncovered positions, particularly in the wake of recent plans to freeze the company-wide retirement plan.
- The owners expected to sell the company in the next

three to four years, and wanted to incentivize key leaders to remain until after the sale (and beyond, if agreeable to all parties after the transaction).

Our Approach

We implemented a four-part review process:

1. Based on our knowledge and industry standards, we recommended a competitive retirement benefits package that would conform to the organization's human resource objectives and financial constraints.
2. Reviewed and recommended approaches for adding retention or "handcuff" provisions to the program, considering constraints within applicable law, including Internal Revenue Code Section 409A to avoid "excess parachutes" and associated tax penalties.
3. Worked with the company's legal counsel and financial advisors to recommend a funding approach that balances benefit security, efficient use of resources, and avoids undesired tax consequences, such as constructive receipt of income and taxation to the executives prior to benefits being paid.
4. Estimated the impact of the proposed programs on the company's financial statements, and recommended and implemented prudent ongoing administrative processes, including annual valuations and strategies with respect to FICA taxation.

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Solution

Based on the Retirement Practice's suggestions, the company's board implemented an offering customized for each executive that:

- Tailored the benefit level to each executive based on length of service, current remuneration, proximity to retirement, and importance of their position and duties to the company's success.
- Provided retention incentives by withholding benefits until normal retirement age (typically 65) while incorporating a trigger for immediate retirement eligibility upon a change in control.
- Avoided excess parachute payments and the associated tax penalties (that potentially arise with a change-in-control trigger) by careful design of benefit levels and other features.
- Utilized appropriate funding options, including no funding, i.e., earmarking a reserve on the company books; non-trust assets (marketable securities or corporate-owned life insurance); or housing assets in a trust, offering benefit security while avoiding constructive receipt and taxation (a rabbi trust).
- Provided an additional measure of benefit security through plan features such as a lump sum payment option that accelerates payments (as opposed to a payout spread over 20 years or more).

Results

The company was acquired by a large competitor within two years of implementing the executive retirement plans. The primary purpose of enhancing retirement security and rewarding key leaders for their service was achieved. Retention objectives were exceeded, as all five of the key executives remained onboard to guide the transaction to its completion, and beyond. This outcome is specific to the unique circumstances of this client, but is representative of the consultative review process that is utilized to arrive at a solution that meets the objectives of the employer.

Contact your McGriff Benefits Consultant if you are interested in implementing or fine-tuning an existing deferred compensation plan and supplemental executive retirement program.



By Eddie Vaughn
McGriff Retirement Practice Leader

McGriff Survey Series: Retirement Benefits

In the newest release in the McGriff Survey Series, we asked employers about how they perceive retirement matters and what actions they're considering with respect to their retirement plan offerings. We heard from 237 employers in all major industries and geographies with large employers (500 or more employees) representing 14% of all responses. Our key findings suggest that employers see the value in offering meaningful retirement benefits.



Click on the image above
to access the survey.



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