

# It Benefits You Your Employee Benefits Newsletter

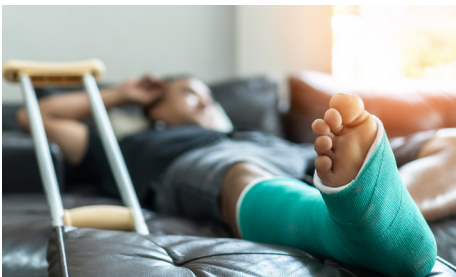
March 2021

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**Beware the Ides of March...**In 44 BC, a seer warned Julius Caesar that harm would come to him no later than the Ides of March. When the morning of March 15 arrived with no disasters, Caesar remarked to the seer, "The Ides of March have come." The seer promptly replied, "but not gone." Unfortunately for Caesar, the seer was proven right. Caesar met his fateful end that day and died on the steps of the Theatre of Pompey at the hands of Roman senators.

Some days should be marked on your employee benefits compliance calendars and anticipated with awareness, but not fear. With McGriff as your trusted employee benefits partner, these days will come and pass without Caesar-size repercussions! Creating a strategic plan to meet reporting and notice deadlines will save you time, trouble, and money by avoiding potential penalties. Your McGriff Benefits Consultants can help you start planning now to avoid problems later. Heed the warnings and plan in the present, so you don't dread the future!



## McGriff Webinar – Managing COVID-19 Workers' Comp Claims in the New Normal

Let's discuss the unique issues related to COVID-19 workers' compensation claims and best practices for handling them going forward. Presented by McGriff Claim Consultant Cindy Carmicle, AVP, AIC, CICP, and Claim Account Executive Scott Watson. **March 18 at 11am PT / 1pm CT / 2pm ET** - Click [HERE](#) to register!

# Upcoming Compliance Deadlines

March



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

An ALE must file Form 1094-C, as well as the 1095-C forms sent to all full-time employees, with the IRS by March 1, 2021 (since February 28 is a Sunday). A self-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 self-funded plan. If an employer is filing 250 or more forms, they must file electronically by **March 31, 2021**.

March



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

Pursuant to I.R.C. Section 6055, a self-funded employer (including level-funded) with less than 50 full-time employees must provide 1095-B individual statements to full-time employees covered under their group health plan. Pursuant to I.R.C Section 6056, 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 2020 year. *\*The IRS issued Notice 2020-76 automatically extending the January 31 deadline to provide 1095-C forms to individuals. In addition, a small self-funded ALE does not need to automatically furnish 1095-B statements to covered individuals, but must provide upon request.*

March



## FFCRA Tax Credit Extension Ends

The Coronavirus Response and Relief Supplemental Appropriations Act, 2021 ("the CAA") allows covered employers an extension of time to submit FFCRA tax credits should they voluntarily choose to allow employees to take paid sick leave for COVID-19 related reasons or paid family medical leave for child care due to COVID-19 school or daycare closures. Employer tax credits will now apply for FFCRA leave taken through March 31, 2021.

April



## Correction of Excess Contributions to HSAs

If funds were contributed in excess of an employee's contribution limit or for an ineligible individual, they may be subject to penalty and an excise tax, unless the excess and earnings are corrected by the federal tax-filing deadline (including any extensions).



## We'd Love to Hear from You!

Thanks for reading *It Benefits You!* We strive to bring you relevant and interesting content every month from our McGriff thought leaders, as well as our valued and trusted partners. Our internally authored articles come from our National Specialty Practice teammates - dedicated knowledge workers revolving around these core areas relating to your employee benefits program:

- HR Advisory
- Compliance
- Financial Analytics
- Clinical Wellness
- Ben Admin Technology
- Pharmacy Benefit Consulting
- Communications
- Flex Benefits
- Retirement Consulting

We'd love to hear your feedback! Are there certain topics that interest you? Would you like to hear more? Let us know! Send your comments and suggestions to [laura.clayman@mcgriff.com](mailto:laura.clayman@mcgriff.com)!

**Laura K. Clayman, JD, SHRM-CP**

McGriff EB Compliance Team  
*It Benefits You* Editor





# Funding Strategies for Employers with Defined Benefit and Cash Balance Pension Plans

Each year plan sponsors face the decision on how much to contribute to their pension plan. There is a decision to make because the contribution must be at least equal to the minimum required contribution (MRC) but no greater than the maximum tax deductible contribution limit. The MRC is the minimum amount, as defined by IRS regulations, that a plan sponsor must contribute for a given plan year. The tax deductible contributions for a plan sponsor are limited by a maximum tax deductible amount for each plan year. Since plan sponsors have an opportunity to develop a funding strategy within these boundaries, what is the right contribution to make?

## The Minimum Contribution

For each plan year, regulations define the MRC as the minimum amount a plan sponsor must contribute for the pension plan. The MRC can fluctuate from year to year based on the plan's funded status, which is the benefit liability compared to plan assets. A company may choose to contribute the minimum required amount because cash is needed for alternative business activities or to meet an unplanned, significant increase in the MRC. While contributing the minimum amount does satisfy the regulatory funding requirements, is the minimum contribution sufficient to achieve the plan sponsor's long-term funding goals?

## The IRS Maximum

At the other extreme, plan sponsors can contribute up to the maximum tax deductible limitation. Funding to the maximum level will help the plan sponsor reduce future contribution requirements and gain larger tax deductions compared to contributing only the MRC. However, a funding policy of always contributing the maximum amount could lead to an overfunded plan. If the plan sponsor intends to terminate the plan in the near future, an overfunded plan could have undesired tax implications at the time of termination. Considering the above, is it better to fund the plan at the maximum level? Knowing the impact of the contributions and the future direction of the plan is of vital importance in the decision process.

## Any Point in Between

The minimum required contribution and the maximum tax deductible limitation serve as boundaries on the amount of annual cash contributions. The long-term impact of a contribution strategy that takes advantage of the available range of contributions can be evaluated to arrive at the best financial decision. Once the plan sponsor sets a specific long-term goal for the plan, the funding strategy can be tested to see whether it supports reaching this goal. A sponsor that contributes near the minimum amount takes a greater risk of potential exposure to contribution volatility from one year to the next. Making a choice to contribute in excess of the minimum amount should help reduce this volatility and allow improved planning for future contribution requirements. Any additional contributions will generally reduce the contributions required in future years.

## A Cash Balance Plan Twist

Cash balance plans offer a unique twist to the annual contribution decision process that can be beneficial, especially for plans used by smaller business to build retirement security for business owners. In lieu of the MRC, sponsors of cash balance plans could consider making contributions that are equal to the contribution credits for the upcoming year plus the interest credit amounts. As the contribution credits are either a flat dollar amount or tied to pay, the plan sponsor can easily predict the amount

Cont'd.

for the coming year by knowing the number of employees and their salaries. The interest credit rate is determinable in advance as well, because the rate is either a defined static rate or a published market index that is known prior to the start of the plan year. Using this particular strategy will help dampen the annual contribution volatility more so than the basic MRC funding strategy, and it can help avoid a surprise like having an unfunded plan if it is later decided to terminate the plan and settle benefits. In addition to dampening volatility and helping achieve a fully-funded plan, these additional contributions can help minimize or eliminate PBGC variable rate premiums.

### Making the Right Annual Contribution

So what is the optimal strategy for a plan sponsor? That depends on the sponsor's available cash and appetite for risk. While funding strategies can range from the simple to the complex, here are a few broad frameworks for consideration when evaluating contributing an amount in excess of the current minimum required contribution:

- Contribute at the minimum plus some additional margin,
- Make an additional adjustment to maintain or pursue a plan's funded percentage (ratio of assets to liability) at a predetermined level,
- Develop a contribution using more reasonable discount rates than those currently used for setting the MRC, or
- Contribute an amount equal to a targeted percent of payroll.

Whatever the approach, formulating and implementing a well-tailored funding strategy will help minimize funding surprises and can help provide more predictable and tolerable contribution requirements from one year to the next.

#### Steven Bull

McGriff Retirement Consulting,  
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This article was previously published in HR Professionals Magazine. [Click here](http://www.hrprofessionalsmagazine.com) for your free digital subscription! [www.hrprofessionalsmagazine.com](http://www.hrprofessionalsmagazine.com).



### HR Q&A – Sexual Harassment Investigation:

**Q:** We received credible reports from several employees and witnesses concerning sexual harassment by a manager. We feel confident in proceeding with termination, but we have not interviewed the accused manager. Should we get his side of the story before terminating?

**A:** Yes, you're on safer ground terminating the accused employee if you interview him as part of your investigation – and do the same for other employees accused of harassment. In this case, you might not learn anything that would change your mind about the termination, but it's still a possibility. More importantly, if the terminated employee were to challenge your decision, you would be able to show that he wasn't treated any differently than other accused employees.

If you were to skip the interview with him, while typically interviewing other employees who have been accused of harassment or misconduct, he could claim that your decision in his case was discriminatory. A consistent practice protects you against discrimination claims, and since you'll often need to talk to accused employees to get a full picture of what happened, it's best to consistently interview all employees accused of wrongdoing.

This Q&A was republished with permission from ThinkHR.com.

# COVID-19 Vaccinations: Top Questions



As the roll out of the COVID-19 vaccine continues, employers have questions about how the vaccine can or should tie into their business policies. To help you navigate these continuing unprecedented times, following is a summary of several of the top questions submitted to your McGriff team as well as helpful links to additional resources:

**Q Can an employer require its employees to be vaccinated with the COVID-19 vaccine?**

**A** In short, yes – employers may be able to require the COVID-19 vaccine as a mandatory condition of employment, subject to several policy exemptions and conditions as discussed in the questions below. In [guidance](#) issued on December 16, 2020, the EEOC confirmed that the vaccine itself is not a “medical examination” under the Americans with Disabilities Act (ADA), however also noted that pre-vaccination questions may be “disability-related inquiries” under the ADA. This guidance is significant in that it gives employers discretion to require employees to obtain a vaccine through their own preferred means and/or provide proof of receipt of the vaccine, while it also potentially limits an employer’s direct involvement in the administration of the vaccine absent proof the vaccine is both “job related and consistent with business necessity.” Of course, even if an employer can require the vaccine, there are a number of additional considerations, including organizational culture, employee relations, risk tolerance, industry standards, and vaccine availability. The EEOC and most legal counsel are encouraging employers to *recommend* rather than *require* the vaccine.

**Q What vaccination policy exemptions must an employer consider?**

**A** As noted above, employers requiring the COVID-19 vaccine must ensure their vaccination policy includes several mandatory policy exemptions: (1) medical exemptions under the ADA and (2) religious belief exemptions under Title VII of the Civil Rights Act (Title VII). In reviewing whether an ADA exemption may apply, employers should engage in the ADA’s required interactive

process to determine whether the employee has a medical condition preventing the employee from receiving the vaccine for medical reasons, while a religious belief exemption may apply if an employee has a “sincerely held” religious objection to the vaccine.

If one of these exemptions applies, then employers must provide a reasonable accommodation to the vaccine, unless that accommodation would cause an undue hardship or unless the employee poses a “direct threat” even after provision of the accommodation. If no accommodation can be made, the employee may be terminated; however, employers should be aware that showing undue hardship in these scenarios will be a very high burden and should exercise extreme caution as well as consult with legal counsel.

**Q What if an employee is fearful of the vaccine or is politically or ethically opposed to the vaccine? Do these objections fall under EEOC protection?**

**A** No. The COVID-19 vaccine is an emotionally charged subject; however, fear of the vaccine or political, ethical or other general objections do not fall under an ADA or religious exemption. Employers will need to be prepared to deal with the employee relations backlash if they choose to mandate a vaccination. In addition, employers will need to determine in advance whether they will allow for objections such as these or if they will make the decision to terminate those employees whose objections are not protected by the EEOC.

**Q Can an employer require employees to be vaccinated while the vaccine is under an FDA Emergency Use Authorization (EUA)?**

Cont'd.

**A** Vaccines are currently being administered under an EUA. When a vaccine is issued under an EUA, as opposed to FDA vaccine licensure, the FDA has an obligation to:

*[E]nsure that recipients of the vaccine under an EUA are informed, to the extent practicable under the applicable circumstances, that FDA has authorized the emergency use of the vaccine, of the known and potential benefits and risks, the extent to which such benefits and risks are unknown, **that they have the option to accept or refuse the vaccine**, and of any available alternatives to the product (emphasis added).*

Because EUA guidance specifically states recipients have the option to accept or refuse the vaccine, employers should consult with legal counsel if they are considering mandating the vaccine under an EUA.

**Q What should an employer consider if wanting to provide incentives through a wellness program to employees receiving COVID-19 vaccinations?**

**A** Depending upon how a wellness program is structured, compliance concerns under ADA, ERISA, HIPAA, or GINA are often triggered.

While the EEOC has confirmed that administration of the vaccine itself is not a medical examination and does not trigger the ADA, vaccine administration is typically accompanied by medical questions to determine whether the person is a good candidate for the vaccine. Such questions could be considered a disability-related inquiry and subject the program to ADA regulations - particularly if this information is requested by the employer or a third party who has been hired by the employer to administer the vaccine as part of a wellness program. If the ADA applies, the employer's program will be subject to the ADA's "voluntary" standard, which, among other compliance requirements, limits the incentive allowed. Recently proposed regulations could limit this reward even further to a "de minimis" threshold, such as a water bottle or gift card of modest value.

There is an argument that ADA limitations may possibly be avoided if the employer remains hands-off with the vaccination process itself. For example, a program designed to allow an employee to qualify for an incentive by going to a provider of their choice, not contracted by the employer, to obtain the vaccine and by providing proof of vaccination may potentially avoid ADA wellness plan regulations.

However, depending on the design of the program, additional restrictions may be imposed by HIPAA.

With any wellness program, there are also concerns with allowing employees who are not on the employer's health plan to participate, as it can be difficult to comply with laws such as ERISA, COBRA and the ACA's group health mandates. An employer should consider these added compliance challenges when determining which employees will be eligible for any COVID-19 vaccination incentive.

Finally, an unintended consequence of a seemingly neutral policy providing an incentive for vaccinations is the potential for discrimination by disparate impact. Even if this is meant as a neutral policy, the policy could in fact discriminate against employees with medical conditions (ADA discrimination) or sincerely held religious beliefs (Title VII discrimination) that would exclude them from participating in such a benefit program.

**Q Are there other ways to encourage employees to get a COVID-19 vaccinations?**

**A** Yes. Employers can encourage employees to obtain the vaccine by developing communication programs; providing CDC information to aid employees in making vaccination decisions; and assisting employees with logistical information to help navigate the information gathering process of rapidly changing state and local guidelines. Some employers are also offering paid time off to receive – and to recover from – the vaccine.

**Additional Resources**

- [McGriff COVID-19 Frequently Asked Questions](#)
- CDC: [COVID-19 Vaccine FAQs, Data Tracker and State Vaccine Locator](#)
- CDC: [COVID-19 Vaccine Employer Communication Toolkit for Essential Workers](#)
- WebMD: [State-by-State Guide to COVID Vaccination Information](#)
- Kaiser Family Foundation: ["Vaccination Line": An Update on State Prioritization Plans](#)
- Kaiser Family Foundation: [State COVID-19 Vaccine Priority Populations](#)



## Health Savings Accounts (HSAs) as a Valuable Retirement Account

Most employees think of HSAs as a way to pay for current qualified medical expenses such as doctor and hospital expenses as well as prescriptions. However, employees should be educated regarding the value of their HSA after age 65 and using their HSA into their retirement years. HSAs are a valuable tool to enhance retirement savings.

An HSA can only be established with enrollment in a High Deductible Health Plan (HDHP). Generally speaking, the HDHP offers premium savings; however, HSAs also provide triple tax savings: (1) money goes into the HSA tax-free, (2) continues to grow tax-free, and (3) can be spent tax-free for qualified medical expenses.

The IRS sets the maximum annual contributions to an HSA in a calendar year (subject to cost-of-living adjustments). The limit is determined by the type of coverage elected (single or family), and the participant's age:

2021 HSA Contribution Limits		
Age	Single Coverage	Family Coverage
Under 55	\$3,600	\$7,200
55-64	\$4,600	\$8,200

An HSA should be considered a source for long-term savings and investment. If unused, the funds that both participant and employer contribute remain in the account year after year. The

HSA is a personal savings account, which grows over time. Many HSAs offer the opportunity to invest in mutual funds and other securities which can accelerate account balance growth. In fact, using an HSA to save for retirement medical expenses can be as valuable as using retirement accounts as a saving strategy.

Medical expenses are one thing we can all count on in retirement. At age 65, HSA money can be used for anything (maybe that dream vacation), but taxes will apply to the withdrawal; however, using an HSA for medical expenses post-65 is tax-free. Having an HSA is the best option for covering health costs in retirement.

When selecting a health insurance plan, it may be time to consider a HDHP and open an HSA to start saving for medical expenses both now and for retirement. By maximizing contributions, taking advantage of investment options and leaving as much of the balance untouched until retirement as possible, an HSA can create another significant retirement savings option.

Please reach out to your McGriff Benefit Consultant for more information on HSAs as a valuable retirement savings option for your employees.

**Paula Smith, SHRM-CP, PHR, FCS, CFC**

McGriff Flexible Benefit Services,  
New Business Specialist





## ThinkHR Spotlight: HIPAA Training

Does your organization sponsor a self-funded health plan or otherwise have access to Protected Health Information (PHI) under the Health Insurance Portability and Accountability Act (HIPAA)? If so, you're probably aware that HIPAA training is required for all workforce members who have access to that PHI. Did you know that ThinkHR offers six different HIPAA online training courses – from *HIPAA for Non-Medical Employers* to *HIPAA Privacy and Security Rules for Covered Entities and Business Associates* – through its Learn web-based learning management system? To start building your HIPAA training program, simply login to your McGriff-sponsored [ThinkHR portal](#) or reach out to a ThinkHR Advisor at 877.225.1101 for assistance!



### Join the McGriff-Sponsored ThinkHR Demo!

We are excited to bring you 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 **March 16 at 11am PT / 1pm CT / 2pm ET** for a brief overview of ThinkHR and its benefits available to you as a client of McGriff. Click [HERE](#) to register!

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