

# It Benefits You Your Employee Benefits Newsletter

February 2021

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**February is American Heart Month** - a time where heart-health awareness is brought to the forefront by many communities, health providers, families, and health conscious employers. A well thought out employee benefits package can be the heart of a company's strategy to recruit top talent and promote loyalty among their workforce. Your McGriff Benefits Consultants, Account Teams, and National Specialty Practices keep their fingers on the pulse of what is trending in the benefits and wellness marketplace to provide you with ideas on how to help your employees stay healthy and happy in the workplace!

## McGriff Webinar – The Next Big Event: Supporting Business Continuity During a Crisis

An effective business continuity plan is essential to the survival of any organization during a pandemic or economic crisis. Join McGriff's Brooks Elliston, MPH, CSP, to learn best practices to minimize the impact during and after an event. **February 18, 2021 at 2 p.m. EST** - Click [HERE](#) to register!

# Upcoming Compliance Deadlines

March

## MEWA Annual M-1



Multiple employer welfare arrangements must file their Form M-1 annual report by March 1 with the Department of Labor. This filing requirement applies to all MEWAs, including insured and self-insured arrangements.

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. See [insert link to appropriate page] for more information. Employer tax credits will now apply for FFCRA leave taken through March 31, 2021. See [FFCRA Paid Leave: What's Extended?](#) for more information

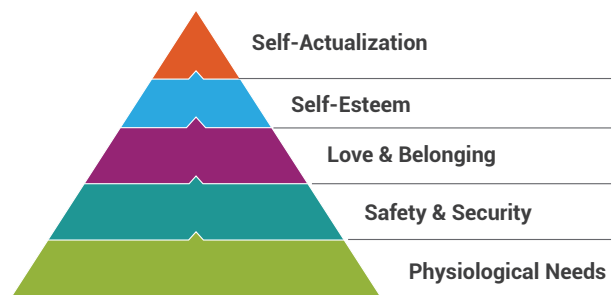
# COVID-19, Maslow's Hierarchy of Needs and The Evolution of Human Resources

When you read the title of this article, you may have scratched your head and thought, what? But, wait – it will all make sense by the end!

There's no need to discuss the absolute chaos of 2020 – punctuated by a global pandemic. In the HR world, we learned so many lessons – and had to change strategies quickly without our usual luxury of research, analysis, proposal and approvals. We had to move – fast. Foremost in our minds was the safety, health and security of our employees. Definitely a gargantuan task. In every organization, in every industry, the new "C" word took center stage. And for the most part, we survived, thrived and succeeded.

Our number one lesson? We couldn't expect our employees to engage with our companies and with their jobs until we were able to meet the basic human need of safety.

## Maslow's Hierarchy of Needs



For the behavioral nerds like me, we realized that Maslow was right. His "hierarchy of needs" theory was proven out in workplaces and the personal lives of almost every person on the planet – that until we have our basic needs met, we cannot advance further to the goal of actualization.

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Our takeaway was this: Human Resources can no longer just be considered the “people” side of our businesses. We have to be obsessed with applying the principles of risk management to all our policies, processes and procedures. Our employees need a focus on safety and security (i.e. risk management) in order to move up the pyramid.

Let’s consider the other layers as well. Physiological needs, of course, must be met first. Applying our HR principles to this, it involves making sure employees are paid properly, that they have appropriate breaks to recharge (both daily and through time away from work). Blurring the line between physiological and safety/security is the benefit offerings. Are they offered in an affordable way so that employees can go to the doctor when needed? Insurance benefits provide that shifting of personal risk due to life and health concerns. Physiological needs are often met through a thoughtful focus on that safety net.

What about “love and belonging?” In our personal lives, the need is met through our family and other interpersonal relationships. What about at work? Feeling part of the organization at more than a superficial level is vital to employees having a connection with the company. Having friends at work is important. Believing the work has meaning is also important. We often call this “engagement.” It is the idea that we can easily engage the hands (work) but it takes more effort to engage employees’ hearts (engagement). In our analysis, note that until safety and security needs are met, that “love and belonging” (i.e. “engagement”) piece doesn’t fall into place. By redirecting much of our HR strategy into making the workplace a safe and secure entity, we can expect better engagement of both the hands and hearts of our employees.

Self-esteem is bolstered when employees are recognized for their work, efforts and contributions. It is also boosted by learning and development opportunities as well as promotions. A confident employee is a better employee. When employees know where they stand with “the boss,” they are more likely to contribute at their highest capability and thus the entire organization benefits. Risk management assessment is important here because when employees are not rewarded properly, they may leave the organization. We have always measured turnover as a cost – mostly monetarily and productively. But there is inherent risk in not developing employees and providing opportunity. Good employees always have choices. When their self-esteem suffers because of poor compensation and reward systems, they may quit, leaving the organization with a

building full of mediocre employees. This will result in a huge risk to efficiency, productivity, customer satisfaction and ultimately the bottom line.

Self-actualization is the goal of every good HR strategy. When employees are secure, safe, engaged and provided opportunities to be their best, self-actualization occurs. Self-actualized employees are our top tier. They perform at their highest level. But it cannot happen without HR being consumed with the application of risk mitigation to every corner of the employee life cycle.

So what now? The New Year gives us great opportunity to shift our focus from traditional personnel/human resource theory to one of risk mitigation. Rather than Human Resource Management (HRM) we should focus on evolving our practices to one of Employee Risk Management (ERM). Look at every aspect of your HR responsibilities through the lens of risk.

Example: Recruitment – what are the risks of not doing it well? What is the risk associated with poor background checks? What is the risk associated with not having a good DEI (diversity, equality, inclusion) policy and practice? What is the risk of not adjusting our pay practices in order to hire the best and brightest? Answering these questions will help bring focus back to the importance of this process and, thus, address the risk to the company if we are not fully focused.

When RISK is the central focus, executives pay attention. By framing all concerns, strategies and requests for resources in the context of risk, risk management and risk mitigation, the picture is much clearer. Executive management understands risk and deals with it daily. When we approach them with requests that will boost “morale,” they may not be as attentive as when you use “morale” as a measurement of risk.

The lessons of 2020 will be with us for a very long time. But it’s 2021. Time to step back, use those lessons to shift our focus and start an evolution in our HR worlds. It’s time to do things differently because the world is different. Making a strategic change now will reap big rewards farther into the future than just this year. Make those changes count.



**Janie Warner, SHRM-SCP**

McGriff National HR Advisory Practice Leader



## Inclement Weather and Compensation Questions

### If a company closes due to severe weather, do employees still need to be paid?

It depends. Nonexempt employees need to be paid only for actual hours worked plus any reporting time pay that may be required by the state (this is a payment owed to employees when they show up to work and are sent home early). Exempt employees, however, must still be paid when the employer closes due to inclement weather.

#### *Nonexempt Employees*

When the company closes for the day due to inclement weather, nonexempt employees (those who are entitled to overtime) only need to be paid for actual hours worked. The company may require nonexempt employees to take the day unpaid, require the use of paid time off (PTO), or allow employees to elect whether they would prefer to take the day as unpaid or use vacation. All three of these options are compliant, so the company may elect the method that it most prefers. Our general recommendation from an employee morale perspective is to allow employees the option of using PTO, but do not require it.

#### *Exempt Employees*

Exempt employees must be paid for the day. This holds true whether the inclement weather time is in full or partial days. That said, you may require exempt employees to use accrued vacation or PTO for the day, as long as the inclement weather does not result in the exempt employee losing any take home pay. For those exempt employees that do not have sufficient PTO to cover the absence, the employer is required to provide them with their regular pay.

If, however, your workplace was closed for the entire workweek and your exempt employees performed no work at all during that time, you would not be obligated to pay them for that week.

#### *Working from Home*

The most obvious alternative to having an idle workforce for a day is to allow employees to work from home. You will certainly want to consider this option for your exempt employees, since they need to be paid anyway. But there may be valuable work your nonexempt employees can do from home as well.

#### *Consistency*

Remember, though, to be consistent with your own policy and practice. If you have been paying all employees – regardless of their employment classification – for hours they would have worked had you not closed for bad weather, then you should continue to do so. Or, if you would like to end that practice, create a clear written policy with alternative guidelines and distribute it to all employees prior to implementation.

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## The CAA and Employee Benefits - What Do the Changes Mean for YOU?!?

On December 21, 2020, Congress passed the \$1.4 trillion, 5,593 page Consolidated Appropriations Act, 2021 ("CAA") that included over \$900 billion in relief in its Coronavirus Response and Relief Supplemental Appropriations Act, 2021. The CAA was signed into law on December 27, 2020. The McGriff Compliance Team weighs below in on how the CAA affects FFCRA paid leave tax credits, FSA and DCFSA administration, surprise billing and the Mental Health and Addition Equity Act (MHPAEA)!

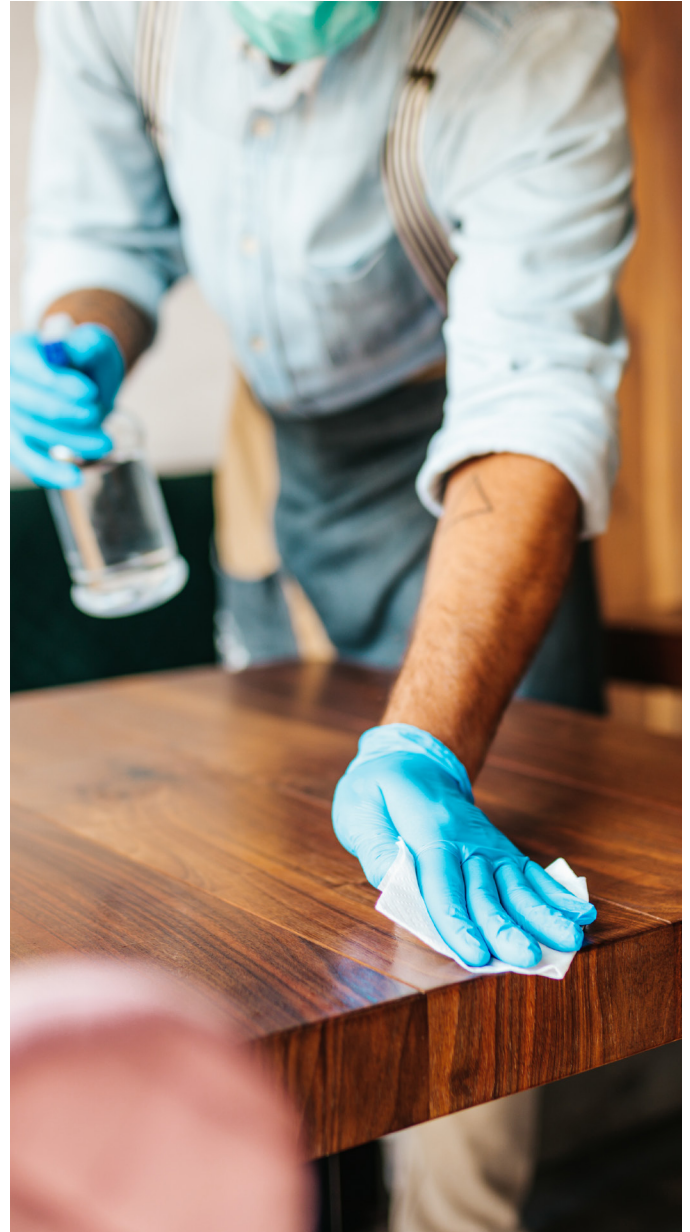
### FFCRA Paid Leave: What's Extended?

Families First Coronavirus Response Act (FFCRA) created two paid leave mandates for covered employers: the Emergency Paid Sick Leave (EPSL) and the Emergency Family and Medical Leave Expansion (EFML). FFCRA also created tax credits for employers to cover certain costs of the employee leave required by the law, specifically employee wages, health plan expenses allocable to those wages, and the employer's portion of the Medicare tax related to the wages. Both the EPSL and the EFML mandates began on April 1, 2020 and sunset on December 31, 2020.

Congress declined to extend FFCRA's paid leave mandates beyond December 31, 2020; however, the CAA allows covered employers an extension of time to submit 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.

Essentially, the paid leave is no longer a mandate and is now only a tax credit. If an employer chose to extend FFCRA paid leave, that leave will be covered (up to the 80 hours of ESL and the 12 weeks of EFML). If the employer did not choose to extend that FFCRA paid leave, then the employer's regular PTO policies will apply and FFCRA paid leave requirements ended on December 31.

Note that the CAA did not provide for additional allowed leave time if an employer chooses to extend FFCRA paid leave. The time allowed under the EPSLA is still only 80 hours of paid emergency sick leave, with 12 weeks of leave under the EFMLEA (with the first 2 weeks unpaid and the remaining 10 weeks eligible for paid family and medical emergency leave).



### Health FSAs and DCFSA – What's New?

The COVID-19 pandemic many employees with significant health FSA and Dependent Care FSA ("DCFSA") balances left at the end of the plan year. For many, daycares were closed, office visits cancelled, and procedures postponed. For others, significant unforeseen medical expenses were incurred. In response, regulators provided initial relief in mid-2020, and the CAA extends and expands that relief to prevent participants from losing contributions.

### ***Unlimited Carryover for Health FSAs and DCFSA:***

For plan years ending in 2020 and 2021, health FSA and DCFSA plan sponsors may allow participants to carryover any unused contributions at the end of the plan year. This is a significant modification of the foundational “use-or-lose” rule. This relief temporarily expands the health FSA carryover beyond the standard \$550 and is a new addition for DCFSA. Following the plan year ending in 2021, the maximum carryover will return to \$550 (indexed) for health FSAs, and carryover will again not be a feature for DCFSA.

### ***Extended 12-Month Grace Period for Health FSAs and DCFSA:***

For plan years ending in 2020 and 2021, health FSA and DCFSA plan sponsors may extend a grace period up to 12 months after the plan year ends during which time participants can continue to incur claims and submit for reimbursement. While grace periods are common features for health FSA plans (less so for DCFSA), they are typically limited to 2.5 months after the end of the plan year. The 12 month grace period will be helpful to many participants, but employers with (or considering adding) an HSA plan option should beware. Participants with remaining health FSA funds at the end of the plan year are ineligible to contribute to an HSA during a subsequent grace period. Note: Plans can only utilize the grace period or carryover, not both.

### ***Election Change Relief for Health FSAs and DCFSA:***

Plan sponsors may allow employees to make prospective, mid-year changes to health FSA and DCFSA elections without a qualifying event through the end of the plan year ending in 2021. This relief temporarily modifies the irrevocable election rule, which generally requires a qualifying life event for mid-year changes. Because all changes must be prospective, employees cannot decrease an election below the amount already contributed for the plan year, and no cash refund of any contributions is allowed. Plan sponsors are permitted, but not required, to limit the number of changes allowed under this relief and set a specified time period to request such changes.

### ***Terminated Employee Health FSA “Spend Down”:***

Plan sponsors may permit health FSA participants terminated in 2020 and 2021 to continue to submit claims incurred after termination for the remainder of the plan year and any applicable grace period. The ability to “spend down” a remaining balance after termination, while not common, is generally only available as a standard plan feature for DCFSA plans, but this feature has been extended to health FSA plans for anyone terminated during 2020 or 2021.

### ***Temporary and Limited Increase in Age for DCFSA Qualifying Child:***

Limited relief is also available for DCFSA participants with plan years ending in 2020, who intended to use the contributions for child care expenses for 12 year old children. Only those participants can use any remaining DCFSA funds at the end of the year to reimburse expenses for the now 13 year old during 2020 and the following plan year ending in 2021. This relief is only available to the participants described here, and only carryover funds can be used for the expenses of 13 year olds in the subsequent plan year.

The relief provisions described above are temporary, optional, and require plan amendments for adoption. Plan amendments must be completed no later than the last day of the calendar year beginning after the end of the plan year in which the amendment will be effective. Plan sponsors should communicate with their Third Party Administrator (“TPA”) as soon as possible to discuss the possibility of adopting any of these provisions and the TPA’s capacity for administering the changes. Some provisions will prove difficult to administer, and there may be nuanced considerations beyond the scope of this summary.

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## Additional Benefits Provisions – What Else?

### ***Surprise Billing:***

The CAA also (unexpectedly) contains provisions related to patient billing. The No Surprises Act (Act), signed into law as a part of the CAA, comes as a result of bipartisan efforts over the past few years to end surprise billing for health care consumers.

The Act seeks to protect patients from surprise medical bills particularly in those situations where patients might not have as much control over or choice in their health care provider. The Act focuses on nonemergency services provided by out-of-network providers at in-network facilities, emergency services provided by out-of-network providers and facilities, and air ambulance services. Generally, patients will no longer be billed for unpaid balances and providers will now be required to work with the group health plan or insurance issuer in order to calculate the appropriate amount to be paid by the plan or issuer. This calculation of the amount to be paid will be determined based on the methodology outlined in the Act.

The Depts. of Health and Human Services, Labor and the Treasury will jointly issue regulations regarding this methodology and other requirements the Act imposes. Implementing regulations are required to be issued by July 1, 2021 and provisions of the Act apply to plan years beginning on or after January 1, 2022.

### ***Mental Health Parity and Addiction Equity Act:***

The CAA also contained provisions related to the Mental Health Parity and Addiction Equity Act (MHPAEA), a federal law that generally prevents group health plans that provide mental health and substance use disorder benefits from imposing less favorable benefit limitations on those benefits than on medical and surgical benefits.

In analyzing a group health plan for MHPAEA compliance, there are two major components: 1) Quantitative Treatment Limitations (QTLs) and financial restrictions and 2) Non-quantitative Treatment Limitations (NQTLs). The CAA guidance focuses on the NQTL component. NQTLs include, but are not limited to, medical management standards, formulary designs for prescription drugs, plan methods for determining usual, customary and reasonable charges, exclusions based on a failure to complete a course of treatment and restrictions based on facility type or provider specialty. Under MHPAEA, when plans and issuers apply NQTLs to mental health or substance-use disorder benefits, the NQTLs must be comparable to and applied no more stringently than the NQTLs that apply to medical or surgical benefits. As a result of the latest guidance, plans and issuers are now required to formally analyze and document their compliance with MHPAEA requirements related to NQTLs. Guidance from HHS, DOL and the Treasury implementing such requirements is forthcoming.

By no means are the above elements an exhaustive list of the CAA's provisions affecting employee benefits and health plans. Please reach out to your Benefits Consultant to discuss these elements and many more!



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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 **February 16, 2021 at 2 p.m. EST** 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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