

COVID-19: Compliance check-in

June 22, 2020



Our Compliance check-in document provides a general overview of select Retirement, Health, and Labor and Employment compliance issues that have resulted from or risen in importance because of COVID-19. Future versions will be made available as additional guidance and legislation dictate.

COVID-19 Compliance Considerations	Associated Tasks
Defined Contribution Plans	
CARES Act Withdrawal and Loan Provisions: Review and decide whether to offer to COVID-19 participants	<ul style="list-style-type: none"> Review plan documents Align plan operations with changes Update forms and employee communications including SMMS Prepare COVID-19 self-certifications Amend plan within CARES Act time requirements Align Form 1099-R reporting of COVID-19 distributions
Assess impact of temporary suspension of RMDs and delayed loan repayment provisions on the plan	Coordinate with plan operations and prepare/update participant communications
Address participant concerns and confusion about volatility of financial markets	<ul style="list-style-type: none"> Consider employee/participant communications addressing long-term view of saving for retirement without providing any investment advice Encourage employees and plan participants to educate themselves and use available resources, such as personal financial counselors and online plan tools
Assess impact of furloughs and layoffs on ACP and ADP test results	Consider mid- or quarter-year nondiscrimination testing to determine if it is appropriate to limit what HCEs can contribute for the remainder of the year
Defined Benefit Plans	
Determine how permitted delays to payment of 2020 employer minimum required contributions may help with plan funding	Consult with an actuary and decide whether to adopt - determine plan impact, due dates, etc
COVID-19 implications will likely impact 2020 and 2021 funding requirements	Discuss need to perform modeling the effects based on various scenarios with actuary
Defined Benefit and/or Defined Contribution Plans	
Layoffs/reductions-in-force (RIFs) may create a plan partial termination (DB or DC plan) or reportable event (DB plan only)	<ul style="list-style-type: none"> Monitor layoffs/RIFs for partial plan terminations and/or reportable event Comply with plan changes (i.e., vesting for partial termination) Provide notices and communications as required File reportable event with PBGC
Determine how plan terms might apply or can be modified in COVID-19 situations	<ul style="list-style-type: none"> For a DB plan, check how the plan's preretirement death benefit provisions work and determine if there is a desire to make these provisions more liberal due to COVID-19 concerns; if there is a need to increase workforce, review the plan's suspension of benefits for rehires provision, in-service distributions at age 59½ For a DC plan, enhanced contributions could be used to retain employees and encourage rehires
Consider that military leaves may increase	Understand how plan terms apply in the event of qualified military leave and coordinate communication and administration
Changes can impact employee and participant outreach	Provide plan change updates to call centers and applicable HR and benefit staff

COVID-19 Compliance Considerations**Associated Tasks****Health**

Extended timeframes for HIPAA, COBRA, and claims actions

Review DOL and Treasury guidance on extended timeframes and understand impact to employee benefit plans
 Confirm plan vendors will properly administer extensions

Consider altering benefits or eligibility, or permitting expanded health, FSA and DCAP election changes

Update plan documents to reflect changes
 Provide notification to employees via SMM
 Update carrier systems and call centers
 Consider insurer/stop-loss insurance impact

Consider expanding FSA reimbursement to include OTC drugs without a Rx; \$550 indexed carryover provision

Amend plan document to permit, if necessary
 Advise FSA administrator to update its system
 Prepare employee communications

Review impact of furloughs or changes in employee status on compliance with ACA employer mandate for applicable large employers

Continue to track employee hours and evaluate through monthly or look-back methods
 If using look-back method, review options for offering coverage to full-time employees during the stability period to satisfy the employer mandate
 Determine how employee contributions will be paid for coverage during furlough

Review COBRA policies and procedures

Review and, if needed, update all COBRA notices: initial/election/termination/unavailability
 Decide if any employer-provided COBRA subsidies will be offered

Review HIPAA policies and procedures

Focus on rules for disclosures of protected health information (PHI) to public health officials, personal representatives, family and friends
 Follow minimum necessary standard
 Review technical, physical and administrative safeguards, focusing on information access management procedures for remote access and contingency plan to protect the confidentiality, integrity and availability of PHI
 Inventory BAAs and create BAAs for new service providers as necessary

Provide HIPAA training

Focus on HIPAA privacy, security and administrative requirements emphasizing allowable disclosures, minimum necessary standard, remote access and protection from cyber threats

Labor and Employment

Review existing leave policies and interplay with Families First Coronavirus Response Act and other COVID-19 related federal, state or local laws

Review policies and consider temporary changes to align with current workforce needs
 Ensure compliance with evolving federal, state and local mandates
 Confirm existing leave options, eligibility rules, and internal processes with HR team and update as necessary
 Communicate policies/policy changes to employees and staff

Enhancements to leave and unemployment laws may impact workforce planning strategies in light of COVID-19

Examine potential impact of changes in leave, unemployment and other entitlements on workforce
 Consider modeling impact of different scenarios
 Communicate any changes to employees

RIFs, layoffs and furloughs

Analyze the differences, cost implications, and limitations on varied workforce strategies
 Consider statistical analysis/modeling different scenarios
 Consider CARES Act incentives to avoid layoffs
 Structure furlough plans for exempt and nonexempt employees
 Ensure compliance with any applicable final pay obligations
 Notify employees of COBRA and any benefit conversion rights as applicable
 Determine whether planned employment actions would trigger WARN Act requirements
 Assess severance pay obligations, if any

Recalling laid-off or furloughed employees

Must use neutral selection criteria in crafting return-to-work strategies to minimize risk of discrimination claims

COVID-19 Compliance Considerations**Associated Tasks****Employee financial assistance**

Qualified disaster relief program— allows for tax-free payments to employees to cover expenses due to COVID-19 related hardship

Determine the cost/benefit of setting up this program

Employer repayment of student loans — employers can make payments toward qualified education loans

Determine the cost/benefit of providing this benefit and the parameters of the program

This publication is for information only and does not constitute legal advice; consult with legal, tax and other advisors before applying this information to your specific situation.

