



COVID-19: Compliance check-in

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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	
If CARES Act Withdrawals and Loans were permitted by the plan	<p>If withdrawals and loans were already being offered under the plan, the CARES Act modifications must be adopted by the end of the 2022 plan year (2024 for governmental plans)</p> <p>If withdrawals and/or loans were added to the plan due to the CARES Act, the adoption dates above should be discussed with counsel</p> <p>Align Form 1099-R reporting of COVID-19 distributions</p>
Assess impact of temporary suspension of RMDs and delayed loan repayment provisions on the plan	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 whether changes need to be made to the plan due to permanent or long-term changes in the workforce
Defined benefit plans	
If there were CARES Act permitted delays to payment of 2020 employer minimum required contributions	<p>If required contribution was made after the 2019 Form 5500 filing for the plan, an amended Schedule SB must be filed and the Schedules H and R that were filed should be reviewed for possible updates</p> <p>Consult with an actuary regarding filings</p>
COVID-19 implications will likely impact 2020 and 2021 funding requirements	The American Rescue Plan Act of 2021 provides funding relief for single employer and multiemployer plans and financial assistance for multiemployer plans – discuss modeling the effects based on various scenarios with an 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)	<p>Layoffs/RIFs may have resulted in a partial plan termination and/or reportable event where full vesting and participant notices and communications were required</p> <p>If a partial termination might have occurred, the Consolidated Appropriations Act 2021 provides relief if the number of active plan participants covered on March 31, 2021 is at least 80% of the number of active plan participants covered on March 13, 2020</p>
Health	
Continue to adhere to extended timeframes for HIPAA, COBRA, and claims actions	<p>Review DOL and Treasury guidance on extended timeframes and understand impact to employee benefit plans</p> <p>Confirm plan vendors will properly administer extensions</p>
Consider expanding FSA reimbursement to include OTC drugs without a prescription and menstrual products	<p>Amend plan document to permit, if necessary</p> <p>Advise FSA administrator to update its system</p> <p>Prepare employee communications</p>
Continue to review impact of furloughs or changes in employee status on compliance with ACA employer mandate for applicable large employers	<p>Continue to track employee hours and evaluate through monthly or look-back methods</p> <p>If using look-back method, review options for offering coverage to full-time employees during the stability period to satisfy the employer mandate</p> <p>Determine how employee contributions will be paid for coverage during furlough</p>

COVID-19 compliance considerations**Associated tasks**

Review COBRA policies and procedures	<p>Identify potential assistance eligible individuals who may be entitled to extended COBRA election period and send extended election notices by May 31, 2021</p> <p>Update COBRA election notices for new qualified beneficiaries</p> <p>Prepare to send subsidy expiration notice to affected assistance eligible individuals</p>
Review HIPAA policies and procedures	<p>Focus on rules for disclosures of protected health information (PHI) to public health officials, personal representatives, family and friends</p> <p>Follow minimum necessary standard</p> <p>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</p> <p>Inventory BAAs and create BAAs for new service providers as necessary</p>
Review HIPAA training	<p>Focus on HIPAA privacy, security and administrative requirements emphasizing allowable disclosures, minimum necessary standard, remote access and protection from cyber threats</p>
For plan years ending in 2020 and 2021, consider either: (1) allowing a carryover of unused health FSA and/or dependent care FSA funds to the following plan year or (2) providing a 12-month grace period in which to use FSA funds – cannot do both	<p>Adopt a plan amendment reflecting the change by the last day of the first calendar year following the end of the plan year in which the amendment was effective (e.g., December 31, 2021 for a change affecting the 2020 plan year)</p> <p>Notify employees via SMM for health FSA or through other employee communication channels</p> <p>Communicate impact to HSA participants, if applicable, as adding a carryover/extending a grace period could affect eligibility to contribute to an HSA</p> <p>Update carrier systems and call center scripts</p>
For plan years ending in 2021, consider allowing employees to make prospective changes to health, health FSA and dependent care FSA elections regardless of change in status (can restrict to reducing elections for FSAs)	<p>Adopt a plan amendment reflecting the change by the last day of the first calendar year following the end of the plan year in which the amendment was effective (i.e., by December 31, 2022)</p> <p>Notify employees via SMM for health FSA or through other employee communication channels</p> <p>Update carrier systems and call center scripts</p>
Consider permitting former employees who terminated employment in 2020 or 2021 to receive post-termination reimbursements from health FSAs	<p>Adopt a plan amendment reflecting the change by the last day of the first calendar year following the end of the plan year in which the amendment was effective</p> <p>Notify employees via SMM for health FSA or through other employee communication channels</p> <p>Update carrier systems and call center scripts</p>
If open enrollment period for plan year was prior to February 1, 2020, consider allowing reimbursement of qualified childcare expenses for those children who turned 13 (eligibility limiting age) during such plan year and permitting unused DCAP balances to be applied towards their qualified expenses incurred during the subsequent plan year	<p>Adopt plan amendment reflecting the change by the last day of the first calendar year following the end of the plan year in which the amendment was effective</p> <p>Notify employees through regular employee communication channels</p> <p>Update carrier systems and call center scripts</p>
<p><i>Coverage of COVID-19 preventive services and immunizations:</i></p> <p>Non-grandfathered plans must provide first-dollar coverage of COVID-19 preventive services and vaccinations both in and out-of-network while the public health emergency remains in effect</p>	<p>Notify employees about coverage via SMM or through other employee communication channels</p> <p>Consider revisiting healthcare cost projections</p>
Labor and employment	
Review existing leave policies and interplay with COVID-19 related federal, state or local laws	<p>Review policies and consider temporary changes to align with current workforce needs</p> <p>Ensure compliance with evolving federal, state and local mandates</p> <p>Confirm existing leave options, eligibility rules, and internal processes with HR team and update as necessary</p> <p>Communicate policies/policy changes to employees and staff</p>
Consider impact of COVID-related enhancements to leave and unemployment laws on workforce planning strategies	<p>Examine potential impact of changes in leave, unemployment and other entitlements on workforce</p> <p>Consider modeling impact of different scenarios</p> <p>Communicate any changes to employees</p>

COVID-19 compliance considerations**Associated tasks**

RIFs, layoffs, furloughs and recalls

Analyze differences, cost implications, and limitations on varied workforce strategies

Consider statistical analysis/modeling different scenarios

Consider CARES Act or other incentives to maintain payroll

Consider alternatives to layoff, including Work Sharing Programs

Ensure compliance with applicable final pay, COBRA, benefit conversion, WARN and severance obligations

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

Develop vaccination policy/plan

Evaluate mandatory, encouraged, and voluntary program options to support ongoing business operations

Establish an appropriate employer policy

Determine application to all or some employees, independent contractors, and/or visitors

Identify reasonable accommodations or alternatives for employees unable to be vaccinated due to medical or religious concerns

Confirm reasonable accommodation request process

Consider how to address other objections to being vaccinated (e.g., remote work, additional precautions, leave, discipline)

Consider state/local laws and limitations

Assess NLRA bargaining and union contract obligations

Assess incentives for vaccinations, if any

Consider ACA/HIPAA requirements for wellness programs if part of a group health plan

Design incentive program that maintains “voluntary” nature of participation

Identify reasonable accommodations or alternatives for employees unable to be vaccinated due to medical or religious concerns

Consider options to facilitate employee vaccinations

Consider third party versus on site distribution of vaccines

Identify employee eligibility based on applicable state/local health department rules

Assess potential impact of current remote work arrangements

Weigh pay obligations for time spent receiving or recovering from vaccinations

Requesting proof of vaccination

Determine whether to require proof of vaccinations

Establish what proof will be satisfactory

Consider who will have access to this information and ensure compliance with applicable confidentiality obligations

Instruct employees not to disclose medical information unless requested as part of the reasonable accommodation process

Ensure ongoing compliance with COVID-19 protocols

Continue to follow CDC and state/local COVID-19 protocols even after employees are vaccinated

Plan for employee non-compliance (e.g., leave, discipline)

Plan for reopening

Determine operational needs

Assess physical workspace, workplace practices, communications and training

Weigh potential risks and benefits of onsite versus work-from-home strategies

Identify key limitations (e.g., IT, infrastructure and security)

Determine whether remote work will be permitted and, if so, under what circumstances

Confirm how future requests for accommodation will be handled and appropriate alternatives

Develop and/or update policies as appropriate

Establish necessary protocols to maintain a safe workplace

Employer financial assistance

FFCRA tax credit — available through September 2021

Determine credit eligibility for providing qualifying paid sick and family leave for COVID-related reasons

Determine the cost/benefit of providing FFCRA leave

COVID-19 compliance considerations	Associated tasks
Employee retention credit — available through December 2021	Determine credit eligibility Determine the cost/benefit of maintaining payroll against the available tax credit
Payroll Protection Program (PPP)	Determine program eligibility for forgivable loans to cover payroll and other qualifying expenses (e.g., rent and utilities) Apply by May 31 to secure PPP funding
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

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