



What every HR leader should know about compliance



Compliance Recap

October 2021

October was a relatively quiet month in the compliance space. While we are still waiting for the U.S. government to release the OSHA Emergency Temporary Standard on the COVID-19 vaccine mandate and guidance on broker compensation disclosures, here are the highlights of happenings in October.

FAQs from the Departments on COVID-19 Vaccines and Employer-Sponsored Group Health Plans

On October 4, the U.S. Departments of Health and Human Services, Labor, and the Treasury (the Departments) issued additional FAQs regarding rapid coverage of preventive services for COVID-19 under the CARES Act, HIPAA, and the ACA. The Departments issued the FAQs in response to the Centers for Disease Control and Prevention (CDC) Director's adoption of the Advisory Committee on Immunization Practices recommendation for COVID-19 vaccination. The FAQs discuss a few important topics:

- How the recommendation impacts plan coverage of COVID-19 vaccines (including booster doses)
- Whether plans can offer premium discounts for receiving vaccinations
- If benefits or coverage eligibility can be conditioned on vaccination status
- How vaccine premium discounts and surcharges are to be treated for ACA affordability purposes.

For more information, see the full text of the [FAQs Part 50](#).

HHS Guidance on HIPAA and COVID-19 in the Workplace

In a bid to address confusion about when the Health Insurance Portability and Accountability Act (HIPAA) does and does not regulate disclosure of an individual's vaccination status, the U.S. Department of Health and Human Services (HHS) issued guidance on the applicability of HIPAA to COVID-19 vaccination information. On its new [HIPAA, COVID-19 Vaccination, and the Workplace page](#), HHS breaks down which entities are regulated by HIPAA, when the HIPAA Privacy Rules apply and when they do not, and if employers are allowed to ask about an employee's vaccination status. Keep in mind, even if HIPAA may not apply in certain situations, other laws may apply – such as the Americans with Disabilities Act or the



Rehabilitation Act. Review the U.S. Equal Employment Opportunity Commission's page – [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and other EEO Laws](#) – for a discussion of COVID-19 concerns in the workplace.

IRS Guidance Clarifies Application of COVID-19 Outbreak Period Extensions to COBRA Deadlines

The IRS issued [Notice 2021-58](#), which clarifies the one-year COBRA extensions provided by the Joint Notification of Extensions and guidance issued by the U.S. Department of Labor's (DOL) Disaster Relief Notices.

The Notice clarifies that the disregarded period for an individual to elect COBRA continuation coverage and the disregarded period for the individual to make initial and subsequent COBRA premium payments generally run concurrently. It states if an individual elects COBRA continuation coverage within the initial 60-day election period, the individual will have one year and 45 days after the date of the election to make the initial COBRA payments. However, if the individual makes the COBRA election outside of the initial 60-day period, the individual will have one year and 105 days after the COBRA notice date to make the initial COBRA payment.

The Notice also provides transition relief for COBRA initial premium payments: it allows individuals to make the first COBRA premium payment no later than November 1, 2021, provided it is less than one year and 45 days after the COBRA election date. All subsequent premium payments must be made monthly thereafter.

Finally, the Notice provides examples of how the clarifications and transition relief is applied.

CMS Publishes ICHRA Look-Up Tables to Help Employers Determine Affordability

To help plan sponsors determine whether an Individual Coverage Health Reimbursement Arrangement (ICHRA) offer is considered affordable for Affordable Care Act purposes, the Centers for Medicare & Medicaid Services (CMS) published the ICHRA Employer LCSP Premium Look-Up Table. The table allows employers in states participating in federal exchanges and state-based exchanges on the federal platform to access information on individual market qualified health plans lowest-cost silver plan data by geographic region. To download the 2022 Look-Up Table and Dictionary, as well as access tables from prior years, visit the [CMS Employer Initiatives page](#).

Final Versions of Affordable Care Act Reporting Forms Published

The Internal Revenue Service released final versions of the [1094-B](#), [1094-C](#), [1095-B](#), and [1095-C](#) ACA reporting forms for 2021. Final versions of the 2021 instructions have not yet been issued.

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