



Compliance Services Alert

March 30, 2021

Upcoming key compliance deadlines and reminders for second quarter 2021

With the deluge of federal guidance recently related to the COVID-19 “outbreak period” and new federal legislation in the form of the American Rescue Plan Act (ARPA), it’s easy to let the run-of-the-mill reporting and disclosure responsibilities – not to mention the new obligations reflected in that guidance and legislation – slip through the cracks. We’ve summarized below the key reporting and disclosure obligations for the second calendar quarter in 2021.

We’ve continued, for this second quarter reminder, to separate our entries into three categories: **standard federal** deadlines, **state and local** deadlines, and **pandemic-related** reminders. Within each category we follow our typical chronological approach. *Deadlines may or may not be applicable to your group depending on the employer and plan characteristics.*

Here are potential action items for late March and the second calendar quarter of 2021:

DATE	ACTIONS	NOTES
STANDARD FEDERAL DEADLINES		
March 31	E-file with the IRS Forms 1095-C and/or 1095-B, with Form 1094-C and/or 1094-B, <i>or</i> Submit paper versions of such Forms under a 30-day extension from the March 1 deadline	Employers, except those filing a small enough number of returns to file them on paper (see below), must e-file with the IRS copies of Forms 1095-C (or -B, as applicable) prepared by the employer, along with one or more Forms 1094-C or 1094-B transmittal documents. E-filing is accomplished through the IRS’ AIR (Affordable Care Act Information Returns) platform. A 30-day extension of the March 31 e-filing deadline is available for the asking via Form 8809, submitted through the IRS’s FIRE (Filing Information Returns Electronically) platform. Employers filing fewer than 250 Forms 1095-C or 1095-B have the option to file on paper. The original due date was March 1

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		(the first business day after the standard Feb. 28 deadline), but an automatic 30-day extension was available through the IRS's FIRE online transmittal system.
April 14	Distribute reminder to participants regarding availability of HIPAA privacy notice <i>(Recommended action)</i>	This obligation applies to sponsors of ERISA and non-ERISA health plans, where the plan is self-insured, or insured but the sponsor is "hands on" the plan's protected health information. This reminder is due every third year. Most plan sponsors with HIPAA privacy and security obligations moot the reminder duty by supplying a HIPAA privacy notice regularly (e.g., as part of initial and open enrollment packets). This notice may be provided electronically in accordance with specific requirements. See our publication, <i>Electronic Distribution of Welfare Benefit Plan Required Documents</i> .
April 30, May 31 and June 30	File Form 5500 for plan years ending Sept. 30, Oct. 31 and Nov. 30, 2020, respectively	ERISA plans must file a Form 5500 at least annually unless the plan is exempted from the filing requirement. Filing is accomplished electronically through the Department of Labor's (DOL) EFAST portal. Form 5500 extensions are available by filing a Form 5558 with the DOL on or before the filing's initial due date. Filing Form 5558 allows the plan up to an additional 2½ months to complete the filing.

STATE AND LOCAL DEADLINES

March 31	Submit coverage statements to the New Jersey Division of Revenue and Enterprise Services	Applies to employers who provided medical coverage to New Jersey residents in 2020. Employers that provided <i>self-insured</i> coverage to New Jersey residents during 2020 must file with the Division of Revenue and Enterprise Services copies of the IRS Forms 1095-C (with respect to such residents) that the employer filed with the IRS for 2020. The state does not require, but will accept, the employer's Form 1094-C submitted to the IRS if it is included in the same file. Although New Jersey will accept the same sort of coverage information on Forms NJ-1095, employers will typically want to simply submit copies of the forms they filed with the IRS. The self-insured employer's Forms 1095-C must have Part III completed (showing months of coverage, if any, under the plan), to comply with New Jersey requirements. Employers that provided <i>insured</i> coverage to New Jersey residents during the prior year are not required to file the required coverage information with the Division of Revenue and Enterprise Services <i>if the insurer files it</i> .
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<p>March 31</p>	<p>Submit coverage statements to the <i>Rhode Island Department of Revenue, Division of Taxation</i></p>	<p>Applies to employers who provided medical coverage to Rhode Island residents in 2020.</p> <p>Employers that provided <i>self-insured</i> coverage to Rhode Island residents during 2020 must file with the Department of Revenue, Division of Taxation, copies of the IRS Forms 1095-C (with respect to such residents) that the employer filed with the IRS for 2020. Although Rhode Island will accept the same sort of coverage information on an equivalent statement, employers will typically want to simply submit copies of the forms they filed with the IRS.</p> <p>Employers that provided <i>insured</i> coverage to Rhode Island residents during the prior year are not required to file the required coverage information with the Department of Revenue, Division of Taxation, <i>if the insurer files it.</i></p>
<p>April 30</p>	<p>Submit Forms 1095-C and/or 1095-B, with Form 1094-C or 1094-B, to <i>Washington D.C. Office of Tax and Revenue</i></p>	<p>Applies to employers who provided medical coverage to District of Columbia residents in 2020.</p> <p>Employers that provided medical coverage to at least 50 full-time employees, including at least one District resident, during 2020 must file with the Office of Tax and Revenue copies of the Forms 1094-C and 1095-C, or Forms 1094-B and 1095-B, that the employer filed with the IRS with respect to any employee for whom the employer withholds D.C. taxes, and to any employee who has a mailing address in D.C., whether or not the employer withholds and reports D.C. taxes.</p>
<p>April 30</p>	<p>Make San Francisco HCSO contributions for prior calendar quarter</p>	<p>Applies to employers subject to the San Francisco Healthcare Security Ordinance.</p> <p>Quarterly true-up contributions, if due for the quarter ending March 31, are due by April 30. Self-funded employers have the option of utilizing an annual true-up method in lieu of quarterly filings.</p>
<p>April 30 – <i>Delayed to at least Oct. 31</i></p>	<p>File San Francisco HCSO reporting form for the prior calendar year</p>	<p>Applies to employers subject to the San Francisco Healthcare Security Ordinance.</p> <p>Note: San Francisco did not require this report at all for the 2019 calendar year and has deferred to at least Oct. 31, 2021, the deadline for filing of this report for the 2020 calendar year (there is proposed legislation that would eliminate the reporting requirement for the 2020 year).</p> <p>The deferral and potential elimination of the reporting obligation for 2020 does <i>not</i> affect the obligation to make any otherwise required true-up healthcare expenditures for 2020 or the first calendar quarter of 2021.</p>

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<p>May 31</p>	<p>Submit Forms 1095-C and/or 1095-B, with Form 1094-C or 1094-B, to the <i>California Franchise Tax Board</i></p>	<p>Applies to employers who provided medical coverage to California residents in 2020.</p> <p>Employers that provided <i>self-insured</i> coverage to California residents during 2020 must file with the Franchise Tax Board copies of the IRS Forms 1095-C (with respect to such residents) that the employer filed with the IRS for 2020, along with the employer’s Form 1094-C filed with the IRS.</p> <p>Employers that provided <i>insured</i> coverage to California residents during the prior year are not required to file the required coverage information with the Franchise Tax Board, <i>if the insurer files it.</i></p> <p>Filing must be made electronically if the employer is submitting at least 250 of the same forms.</p> <p>May 31 is the deadline for 2021; for later years, the filing deadline will revert to March 31.</p>
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PANDEMIC-RELATED REMINDERS – OUTBREAK PERIOD REQUIREMENTS

In April 2020 and again in February 2021, federal authorities issued guidance under which welfare benefit plans are required to suspend the running of certain action periods related to COBRA elections and premium payments, HIPAA special enrollment requests, and submission of claims, appeals and requests for third-party review of denied medical claims. Generally, any given action period (e.g., the 60 days a COBRA qualified beneficiary has to elect COBRA after the plan sends the COBRA election packet) is suspended until the earlier of:

- The date that is 12 months after the date the suspension began (although it is unclear whether, with respect to COBRA premium payment due dates for example, each monthly due date is extended for a year after the extension applicable to the month before), and
- The date that is 60 days after the president rescinds the presidential national emergency declaration related to COVID-19.

The following disclosures relate to this outbreak period guidance.

<p>As soon as practicable, if required</p>	<p>Re-issue or supplement notices or disclosures regarding certain COBRA deadlines, HIPAA special enrollment request deadlines, and claims/appeals submission deadlines</p>	<p>Federal “outbreak period” guidance indicates that plan disclosures issued prior to or during the pandemic may need to be reissued or amended if such disclosures failed to provide accurate information regarding the time in which participants and beneficiaries are required to take action, specifically if the prior disclosures did not adequately describe the effect of federal “outbreak period” guidance on COBRA, HIPAA special enrollment and claims/appeals action periods and deadlines.</p> <p>NOTE: While federal authorities made this admonition in their February 2021 guidance, it will be difficult to accomplish on account of vagaries in that guidance, particularly with respect to how to calculate the date on which the running of the relevant action periods, particularly with respect to COBRA premiums, begins again. Lockton has prepared a model notice</p>
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		for consideration by its clients. Contact your account service team.
As soon as practicable, if required	Alert individuals to the impending loss of protections, benefits or rights under a plan due to expiration of "outbreak period" protections, and provide notice of other healthcare coverage options, such as ACA marketplaces	Federal "outbreak period" guidance recommends, where plan fiduciaries know, or should reasonably know, that the end of the relief provided under that guidance may cause a participant or beneficiary to lose protections, benefits or rights under the plan, that the administrator or other fiduciary should consider affirmatively sending a notice regarding the end of the individual's relief period and reminding the individual of the availability of healthcare coverage in an ACA marketplace. Including with such notice the standard federal marketplace notice, which typically is provided within 14 days of new hire, should be adequate for this latter purpose. We are hopeful that federal authorities provide model language for this notice of impending loss of protections, benefits or rights.
Various times	Adjust COBRA election and premium payment, HIPAA special enrollment request, and plan claim, appeal and request for third-party review due dates	To accommodate and comply with the federal "outbreak period" guidance, plan administrators will need to adjust the running of relevant action periods and deadlines with respect to affected participants and beneficiaries. See our original alert from April 2020 and our updated alert from March 2021 for more information.
Various times	Provide ERISA-related notices and disclosures	Federal "outbreak period" guidance gave plan administrators leeway, where that leeway is necessary, to provide ERISA-related notices and disclosures (e.g., COBRA election packets) to plan participants and beneficiaries later than would otherwise be required, as long as the administrator provides the notices and disclosures <i>as soon as practicable</i> . Administrators are also granted wider latitude to provide these notices and disclosures via email or a continuously available website. See our alert for more information. It seems unlikely, this late into the pandemic, that tardy notices and disclosures will be acceptable to federal regulators.

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PANDEMIC-RELATED REMINDERS – COBRA SUBSIDIES

The American Rescue Plan Act of 2021 provides for 100% COBRA subsidies, for up to six months beginning April 1, 2021, for individuals who are not eligible for Medicare, a qualified small employer health reimbursement arrangement (QSEHRA), or other group coverage other than excepted benefits (e.g., dental, vision or health FSA coverage), and who either:

- *Category 1 individuals*: Lose healthcare coverage (other than under a health FSA) due to a reduction in work hours or an involuntary termination of employment if their COBRA coverage period would include at least part of the COBRA subsidy window from April 1 – Sept. 30, 2021, or
- *Category 2 individuals*: Lost healthcare coverage (other than under a health FSA) due to a reduction in work hours or an involuntary termination of employment, if their COBRA coverage period *would have included* – had they elected COBRA when offered, or continued COBRA if they elected it and dropped it – at least part of the COBRA subsidy window from April 1 – Sept. 30, 2021.

The following disclosures pertain to these COBRA subsidies.

<p>Within 30 days of the qualifying event (44 days for self-insured healthcare plans), for <i>Category 1 individuals</i> described above</p>	<p>Temporarily modify COBRA election forms for <i>Category 1 individuals</i> described above</p>	<p>For <i>Category 1 individuals</i>, plan administrators must amend (or include supplemental information with) their COBRA coverage election forms to reflect in clear and understandable language:</p> <ul style="list-style-type: none"> • A description, displayed in a prominent manner, of the qualified beneficiary’s right to the COBRA subsidies and any conditions on such right • Any forms or paperwork necessary for the individual to show or attest to their eligibility for the subsidy (e.g., that the individual is not eligible for other group coverage (other than excepted benefits like dental, vision or health FSA coverage), Medicare or a QSEHRA) • The name, address and telephone number necessary to contact the plan administrator or other person who has relevant information to share with the COBRA qualified beneficiary regarding the COBRA subsidies • A description of the obligation of the qualified beneficiary to notify the plan if the beneficiary is or becomes eligible for other group coverage (other than excepted benefits like dental, vision or health FSA coverage), Medicare or a QSEHRA, and the tax penalty for failing to do so • If the plan administrator is willing to permit it, the opportunity to enroll in a different (less expensive) coverage option, for purposes of COBRA continuation coverage <p>NOTE: Federal regulators are required to issue model notice language by April 10, 2021.</p>
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<p>No later than May 30, for <i>Category 2 individuals</i> described above</p>	<p>Provide a special COBRA election notice to <i>Category 2 individuals</i> described above</p>	<p>Category 2 individuals are entitled to a second, special COBRA election opportunity to avail themselves of the COBRA subsidies. Plan sponsors must provide them with a special COBRA election notice, by May 30, 2021, that includes the information that must be provided to <i>Category 1 individuals</i>, plus:</p> <ul style="list-style-type: none"> • A description of the <i>Category 2 individuals'</i> 60-day election period that begins with the date the plan administrator provides the special election notice <p>NOTE: Federal regulators are required to issue model notice language by April 10, 2021. Presumably, the plan administrator can use the same model notice to accomplish the disclosure obligations described here and in the preceding row.</p>
<p>No more than 45 days and no less than 15 days before the subsidies provided to a COBRA qualified beneficiary are scheduled to end</p>	<p>Notify COBRA qualified beneficiaries who are receiving COBRA subsidies that the subsidies are about to end, if termination of the subsidies occurs for reasons other than eligibility for other coverage</p>	<p>The COBRA subsidies, for Category 1 and Category 2 individuals receiving those subsidies, will end on the earlier of:</p> <ul style="list-style-type: none"> • Sept. 30, 2021 • The end of the individual's maximum COBRA coverage period, measured from their qualifying event date • The date the individual becomes eligible for other group coverage (other than excepted benefits like dental, vision or health FSA coverage), Medicare or a qualified small employer health reimbursement arrangement (QSEHRA) <p>Where the termination of subsidies occurs on Sept. 30, 2021, or, if earlier, at the end of the individual's maximum COBRA coverage period, the plan administrator must send a notice, within the time noted at left, alerting the individual that their COBRA subsidy is about to expire and offering suggestions for replacement coverage.</p> <p>This notice is not required for individuals losing subsidies due to eligibility for other coverage.</p> <p>NOTE: Federal regulators are required to issue model notice language by April 25, 2021.</p>

Ethan McWilliams, MBA
Assistant Vice President, Senior Compliance Analyst
Compliance Services

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Lockton Benefits | 444 West 47th Street | Suite 900 | Kansas City | MO | 64112

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