Employee Benefits Report

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Impact on Business of Growing Interest in Paid Family and Medical Leave

There's growing state and federal government interest in ensuring employees have access to paid family and medical leave.

First, it's helpful to understand the difference between two similar, related terms: short-term disability and the Family and Medical Leave Act:

- **Short-Term Disability Insurance:** This benefit pays an injured employee compensation or income replacement for a non-job-related injury or illness when they are unable to work for a limited time. Many employers offer short-term disability insur-

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Consider Volunteer Work as an Employee Benefit

Volunteer work not only helps individuals and communities thrive, but it also has a positive effect on the workplace.

According to a study by business management consultant company Deloitte, encouraging and promoting volunteering boosts employee morale, improves the workplace mood, and enhances employee and client perception about the company.

The study found 89 percent of employees think organizations that sponsor volunteer activities offer a better overall working environment. Plus, 70 percent believe volunteer activities are more likely to boost staff morale than company-sponsored happy hours.

Despite the possible benefits of volunteering, only 40 percent of employees said they can volunteer for

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ance to their employees. Five states — California, Hawaii, New Jersey, New York and Rhode Island — mandate that employers offer the coverage. One benefit to employers who provide short-term disability insurance is the federal tax deduction they get.

- **Family and Medical Leave Act (FMLA):** This federal law requires employers to guarantee employees up to 12 weeks unpaid leave for certain family or medical reasons. Employers also must offer employees who take FMLA leave a job when they return to work — though not necessarily the same job — with comparable pay and benefits. Companies with fewer than 50 employees are exempt from the law. Employees are eligible if they have worked for the employer for 12+ months, and at least 1250 hours over the past 12 months, and work at a location that employs 50 or more employees within 75 miles. There are also special rules applied to military family leave.

Paid Family and Medical Leave

Paid family and medical leave (PFML) is generally offered at the state level and provides paid leave benefits to employees who are experiencing the birth of a child or a serious illness. Since benefits vary by location, employees also may be able to get paid leave to participate in U.S. military activities or support a family member who has a serious medical condition. Currently, at least nine states — including California, Massachusetts, New York, New Jersey, Rhode Island, Connecticut and Washington D.C. — already require or will in 2022 begin requiring employers to offer PFML.

PFML is funded by paycheck withholdings and administered by the state where the employee works.

Since each state oversees its own program, the rules differ from state to state. For instance, in Massachusetts, PFML is available to full-time and part-time seasonal employees. Employers are required to impose a tax of no greater than 0.75 percent of eligible wages, with the maximum amount coming out of employee paychecks no more than $0.38 per $100.

Self-employed individuals in Massachusetts may contribute but are not required to. Certain employers may apply for an exemption from collecting, remitting, and paying PFML contributions. However, Massachusetts plans must have benefits equal to or greater than the benefits provided by the PFML law, as well as the same rights and protections.

An employee may be eligible for both short-term disability benefits and PFML, but the two benefits cannot be taken at the same time. For instance, a new mother who qualifies for short-term disability after giving birth can choose to take all or any portion of her available short-term disability weeks and then take PFML at any time within the first 12 months; or she could take PFML without using any short-term disability. Whatever an employee decides, no more than 26 weeks of combined short-term disability and PFML benefits are allowed in a 52-week period.

programs through their employer.

To create an employee volunteer program, pay attention to community and employee needs:

- **Decide what your community needs.**
- **Ask your employees about their interests.**
- **Match your volunteer program to your business objectives.**
- **Get buy-in for the program from executives and department heads.**
- **Partner with local organizations to help you with volunteer efforts and to provide the support you need.**
- **Keep track of the number of employees who participate; the hours of time they donated; the amount of money raised; and the number of organizations served.**
- **Reward and recognize employees who participate with awards such as gift cards.**

The Future of PFML

There is interest in requiring employers in all states to offer 12 weeks of paid family and medical leave. Democrats included the provision in the draft bill of their $3.5 trillion spending plan. Republicans strongly oppose the spending package saying that it will overheat the economy. The spending plan “would drown American families in debt, deficits and inflation,” according to Senate Minority Leader Mitch McConnell.

Democrats say the purpose of the measure, part of their Build Back Better Act, is to guarantee workers with time off to raise newborn children or deal with a medical emergency. If approved, the benefits would be effective in 2023 on a sliding scale with lower-earning workers experiencing the largest bulk of their pay replaced monthly. ■

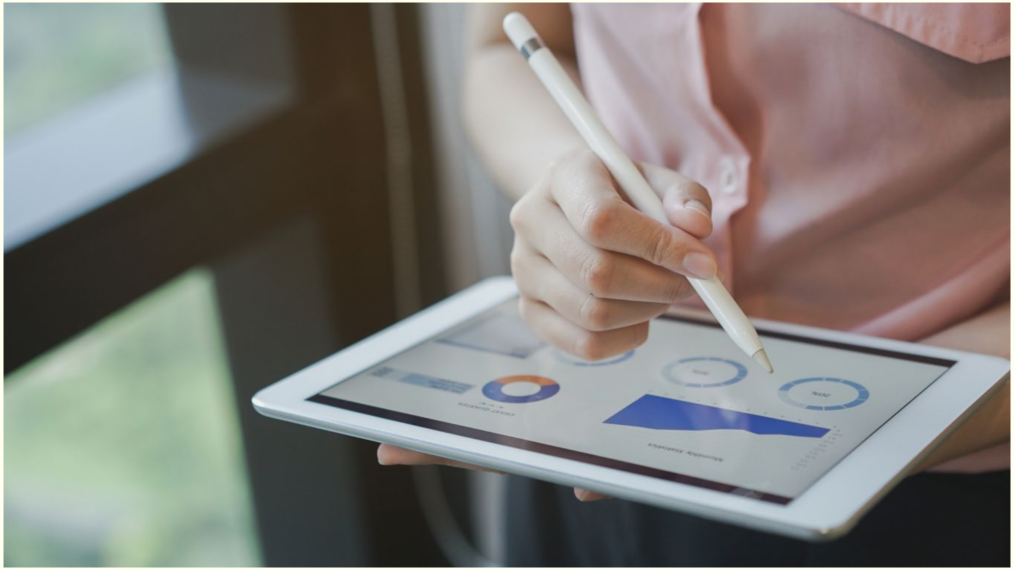
Ways to "Carve-Out" Group Health Plan Savings

Employers who self-insure their group health care benefits may find that carve-outs will help keep their premiums lower.

A self-insured group health plan differs from a fully insured plan in that the employer — and not the insurance company — assumes the financial risk of providing health care benefits. The employer pays for medical claims out-of-pocket as they are incurred.

An employer who self-insures can:

- Eliminate the insurance company profit margin.
- Control plan design.
- Get full access to claims data to better understand how money is spent and analyze the types of coverages that would best fit employee needs.



The downside of self-insurance is the risk of claims becoming higher than expected. While this is something larger employers may be able to handle, smaller employers need to use risk management tools such as level funding, which utilizes stop-loss insurance to lower risk.

Carve-Out Advantages

Another way for self-insureds to control medical claims is to work with a health insurance carrier to design a carve-out plan. A carve out plan excludes specific situations, conditions or products that may be considered too costly under a regular group insurance policy. A well-designed carve-out program allows employers to better predict plan expenses by pulling volatile areas of care out of the health plan.

Conditions that are excluded are then covered by a third-party vendor — such as an insurance carrier or several carriers. The carriers assume the financial risk and receive a flat fee in exchange for their coverage.

Carve outs can exclude the following conditions:

- Cancer
- Trauma
- Cardiac care
- Neonatal intensive care
- Organ transplant
- Burn treatments
- Visual services
- Dental services
- Specialty drugs
- Mental health

Carve-Out Disadvantages

An employer could face some challenges with a carve-out plan. If you are considering incorpo-

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rating a carve-out plan into your self-insured health benefit plan, here's what you should consider:

- An insurance carrier may require your group meet minimum participation requirements.
- You and your employees may be required to fill out health questionnaires. Anyone who is categorized as high-risk may be denied coverage.
- Insurance providers may restrict you from offering alternative choices or options through other insurance companies.
- You will have to draft multiple pharmacy and medical contracts since you will be dealing with more than one vendor for different products.
- Your company may face some transitional challenges while dealing with employees' health insurance. For instance, it can be confusing for employees to keep track of which insurance carrier is covering which medical condition. This can also make claim processing difficult.
- There is a possibility that a third-party provider's performance may be subpar.
- Your company may lack the systems, skills and human resources to manage the risk effectively.

As always, talk to your broker about your options and whether a carve-out plan would be a good fit for your company.

COVID-19 Vaccination Mandate Raises Questions for Employers and Legal Scholars

Reaction to President Joe Biden's COVID-19 mandate requiring most federal and private sector employees to get tested or vaccinated against COVID-19 ranges from supportive to defiant.

Here's what you should know about how your company will be affected.

The Mandate

Biden announced Sept. 9, 2021, that federal workers — including White House staff, federal agencies and armed services — must take the COVID-19 vaccine. They cannot opt out and get weekly tests instead. Biden also said anyone who wants to work with the federal government must get vaccinated, including health care workers at facilities receiving federal funding through Medicaid and Medicare.

The Departments of Defense and Veterans Affairs, the Indian Health Service and the National Institute of Health have announced they will complete their previously announced mandate to require that the over 2.5 million employees under their jurisdictions get vaccinated.

The Biden mandate also requires businesses with 100 or more employees to ensure all employees get vaccinated or get tested if unvaccinated once a week.

The delta variant of the coronavirus has led to a spike in hospitalizations and deaths — mostly in unvaccinated populations — and the new directives are part of Biden's plan responding to the surge. Even though the U.S. Centers for Disease Control and Prevention report that more than 63 percent of Americans have received at least one COVID-19 dose, vaccination rates have slowed. About 54.5 percent of the U.S. population is now fully vaccinated.

Implementation

The Department of Labor's Occupational Safety and Health Administration is in charge of the rule. The rule is expected to affect 80 million workers in the private sector; 50,000 health care providers; and 17 million health care workers.

Although the vaccination rules have not been finalized, the following conditions will be mandated:

- Religious and medical exemptions are allowed.
- OSHA will require large employers to provide paid time off for workers to get vaccinated.
- Companies failing to comply will face penalties up to $14,000 per violation. Employees who refuse to get vaccinated can be fired.
- The Labor Department's Occupational Safety and Health Administration will enforce the fine.
- Individual federal workers and contractors who do not comply will go through agency-based counseling and disciplinary action and can be fired for refusing the vaccine without a proper exemption.

The Biden administration also is pursuing a booster vaccine regimen for those who already received shots.

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Exemptions

Biden's sweeping employee vaccine mandate does not affect everyone. These groups are exempted:

- Employees who work for companies with 99 or fewer employees.
- Members of Congress, employees who work for Congress or employees in the federal court system.
- Illegal immigrants crossing the border. About 30 percent of immigrants held at federal detention facilities are refusing to be vaccinated and they have the option to refuse. Border Patrol estimates more than 18 percent of migrant families who recently crossed the border tested positive for COVID before being released.

Those in Support

Joe Biden stressed that getting the vaccination is not about "freedom or personal choice."

"It's about protecting yourself and those around you, the people you work with, the people you care about, the people you love. My job as president is to protect all Americans," he said.

Many Americans — including employers — agree. Companies such as United Airlines, Tyson Foods, Disney and Fox News have already implemented vaccine mandates.

Supporters say that not only are vaccine mandates needed to keep the U.S. population safe, but they also are constitutional. Erwin Chemerinsky, Dean of Berkeley Law School and constitutional law professor, said there is no problem with requiring people be vaccinated. He said the issue was settled by the Supreme Court in 1905 in the *Jacobson v. Massachusetts* case. The court's decision raised questions about the power of state government to protect the public's health and the

Constitution's protection of personal liberty.

There is an OSHA Mandate that requires employers with more than 100 employees to provide paid time off for workers to get vaccinated or to recover if they suffer reactions post-vaccination. Sid Shapiro, OSHA expert and Wake Forest University Law Professor, said the issue is whether the government has the authority under some statute to order employers to require vaccination or weekly testing. If that authority does exist, Shapiro said it would be constitutional because Congress regulates interstate commerce.

Those Opposed

Not everyone believes the federal government has the right to mandate the vaccination. Soon after Biden announced his plans, the hashtag #DoNotComply spread on Twitter.

Earlier this year, Biden's White House Press Secretary Jen Psaki said implementing a vaccine mandate is not the role of the federal government. Her remark caused many to question the constitutionality of the mandate. *Newsweek* has reported that President Biden himself rejected the idea of mandatory vaccines on December 4, 2020, while speaking in Wilmington, DE, following his remarks on the November 2020 jobs report.

Republican Rep. Elise Stefanik (R-N.Y.) called it "unconstitutional" and "an authoritarian power grab" in a statement released immediately after Biden's speech. She added that the American people should have the freedom to make the best decisions for their families rather than accepting forced illegal mandates from a power-hungry government.

Several Republican states — all in favor of the vaccination — are pushing back against mask and vaccination mandates as unconstitutional. Alabama and Arizona are filing lawsuits to lift the Biden mandate.

Some companies are pushing back on the mandate as an assault on personal liberty. Company representatives for the conservative *Daily Wire* have publicly supported the vaccine but have threatened legal action against the mandate.

Others wonder about the soundness of Biden's reasoning. Biden has claimed that the unvaccinated need to get vaccinated to protect the vaccinated — while at the same time saying the vaccinated are protected. Notably, Congress itself is exempted from complying with Biden's Executive Order due to separation powers in the government, but Biden's order does impact employees of the Executive Branch.

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Telehealth Education: Good for Employees' Health

Now that the COVID-19 pandemic has highlighted how useful telehealth services can be, employers may wish to encourage employees to try this money-and time-saving option.

In general, telemedicine focuses on using video over devices such as laptops or mobile phones to access medical help remotely. Telehealth, specifically, uses video access to provide health-related education services like diabetes management or nutrition courses.

Popular telehealth calls range from consultations about rashes or the flu to mental health counseling and ear infections. Providers are empowered to prescribe medications when medically necessary for minor conditions, including sinus or urinary tract infections, bronchitis, flu or ear infections.

While immediate access is its primary benefit, telehealth can be a money saver for patient and employer. For patients, the cost of a telehealth visit can be as little as $40 or in some cases, no cost at all. That's a huge savings considering an average doctor visit can be $130 to $190 and a typical ER visit can be $1,500 to $3,000. Employers benefit because the lower patient costs are, the lower overall health plan costs will be.

Despite its advantages, many people don't use telehealth because they are accustomed to or happy with making personal visits to their doctor. They may also be unsure about how to use telehealth.

To promote telehealth, employers should schedule workshops to provide an overview of how telehealth works.

TIP: Encourage would-be telehealth participants to sign up well before using the service. Though it usually only takes about 10 minutes, someone who waits to sign up when they call may not be feeling well enough to deal with completing the questionnaire at that time.