

Employee Benefits Report



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Vaccinations

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New Federal Guidance for Requiring COVID Vaccinations

With some exceptions, you may legally require your employees to get a COVID-19 vaccination as long as the disease is a threat to the workplace.

As vaccines are being developed and made available, many employers are wondering whether they can protect their employees and customers by requiring all employees be vaccinated.

The Equal Employment Opportunity Commission (EEOC), the federal agency in charge of enforcing laws prohibiting discrimination in the workplace, issued guidance in December 2020 for employers who want to require employees to get

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Celebrated Employer-Collaboration to Lower Health Care Costs Ends

A grand experiment to disrupt the health care system has shut down.

Haven, a nonprofit health-care venture formed by Amazon, Berkshire Hathaway and JPMorgan to design health care programs to address the needs of more than a million employees and their dependents, ceased operations in February 2021. However, the companies announced that they plan to continue informal collaborations.

The health care alliance was launched in January 2018 to look for ways to improve outcomes and reduce costs in the health care system and provide

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vaccinated before entering the workplace.

U.S. law allows private employers to define general working conditions, including the adoption of health and safety practices. Setting up practices and procedures includes requiring employees to get vaccinated against diseases that could compromise the health and safety of everyone in the workplace.

Despite new EEOC guidance, employers must consider the impact of equal employment opportunity (EEO) laws, including the American Disabilities Act (ADA); Rehabilitation Act; Genetic Information Nondiscrimination Act (GINA); and Title VII, including the Pregnancy Discrimination Act. Some possible challenges include:

- ✳ ADA limits employers' ability to make disability-related inquiries or require medical examinations. The COVID-19 vaccination, however, is not considered a medical examination.
- ✳ A health care provider may need to ask questions before administering the vaccination to ensure there is no medical reason to prevent an employee from receiving a vaccination. The pre-screening questions may trigger the ADA's provision on disability-related inquiries, which are likely to elicit information about a disability. If the employer administers the vaccine, it must show that these pre-screening questions are "job-related and consistent with business necessity." The employer must demonstrate that employees who do not answer the ques-

tions and don't receive the vaccination will pose a direct threat to the health or safety of others. There are four factors employers can use to determine whether a direct threat exists: duration of the risk; nature and severity of the potential harm; likelihood that the potential harm will occur; and imminence of the potential harm.

- ✳ Title II of GINA prohibits an employer from asking questions about genetic information.
- ✳ An employer may require an employee to show proof of receipt of a COVID-19 vaccination. That is not the same thing as making a disability-related inquiry according to ADA guidelines. However, if the employer asks why an employee did not receive a vaccination, that might elicit information about a disability and would be subject to the pertinent ADA standard that vaccinations be "job-related and consistent with business necessity."

Another option for employers who mandate the COVID-19 vaccine is to have employees get vaccinated at a pharmacy, health care provider or other third party not contracted by the employer. The pre-vaccination screening would not be a disability-related inquiry.

Employers who are not in high-risk industries, such as health care, can make vaccinations voluntary. Voluntary vaccination programs do not trigger the ADA's requirements to demonstrate that the pre-vaccination

employees with simplified, high-quality and transparent health care at a reasonable cost.

Although the focus was on the companies' U.S.-based employees and their families, the creators of Haven intended to share their innovations and solutions to help others.

As part of Haven, Amazon and JPMorgan Chase piloted new health care plan offerings to employees in certain states during the 2020 plan year. In addition, Amazon introduced an online pharmacy in November 2020, two years after acquiring PillPack.

Kaiser Family Foundation estimates that about half of Americans get their insurance through their employers, while the rest depend on government assistance or are uninsured. Since 2010, employer premiums and deductibles have risen faster than wages and inflation.



screenings are "job-related and consistent with business necessity", nor do they require the employer to assess accommodations and show that not getting a vaccination would be a threat to the business. ■

How to Know When Health Insurance Will Cover an Oral Procedure

How to know when an oral procedure is actually a medical procedure and not dental.

Your employees might be able to save money on dental work if they understand the difference between dental care and medical procedures performed in a dentist's office.

Most dental insurance covers routine cleanings at 100 percent. However, policies usually have a low annual maximum benefit and only pay a small fraction of the cost of other treatments.

The good news is that health insurance might cover certain dental procedures. When health insurance pays for oral surgery it typically pays as the primary payer with no yearly maximum. Dental coverage coordinates benefits as the secondary payer.

Employees who understand the difference between a dental and a medically necessary procedure can remind their provider to bill medical insurance when applicable so the patient can afford to get additional coverage.

Dental Care

Dental coverage is the primary insurance when the procedure is not medically necessary or integral to a covered service under medical insurance.

Dental care focuses on preventive and basic procedures. Preventive procedures are those that keep your mouth healthy, such as cleaning, flossing and taking x-rays. Basic procedures are usually straightforward and don't involve a significant laboratory expense for the dentist. They include a wide range of services such as:



- ✦ Fillings to treat teeth for cavities or decay or to repair teeth that have fractures.
- ✦ Dental crowns to repair teeth damaged by decay or injury.
- ✦ Tooth extractions when a decayed tooth can't be saved.
- ✦ Dental implants to replace real teeth.
- ✦ Braces to reposition teeth.

Medical Procedures

A medical procedure is treatment for a diagnosed medical condition that treats an illness, non-biting injury to a sound tooth, condition, disease or its symptoms. An example of an injury that would not fit this definition would be if someone bit into a popcorn kernel and fractured their tooth. That would not be covered by health insurance.

However, if a dentist treats a traumatic injury to a patient's mouth, it is considered a medical treatment and is probably covered under medical insurance.

Most medical insurance excludes payments for the routine care, treatment and replacement of teeth and related structures such as gums and jawbones. In addition, most health insurance policies exclude dentures, bridges, or crowns because these procedures are viewed as cosmetic, even when they restore function.

Examples of medical procedures include:

- ✦ Jaw surgery to correct sleep apnea or Temporomandibular Joint Disorders (TMJ); note that medical plans usually will not pay for orthodontic braces to correct TMJ.
- ✦ Extraction of wisdom teeth in some cases
- ✦ Repair of cleft-palate and other congenital abnormalities
- ✦ Removal of teeth before radiation therapy of the head and neck
- ✦ Excision of cysts or tumors of the jaws or facial bones
- ✦ Reconstruction following surgical procedures for cancer
- ✦ Reduction of facial bone fractures
- ✦ Removal of broken teeth necessary to reduce a jaw fracture
- ✦ Dental services following non-biting accidents in certain circumstances
- ✦ General anesthesia when local anesthesia is not enough; employees should check their policy for a list of qualifying conditions

Encourage your employees to talk to their broker for guidance and to find out how to get the most out of their dental and medical insurance policies. ■

More States Are Embracing Employer-Sponsored IRAs

Americans younger than 59½ will have a second chance to take money from their retirement accounts without paying a tax penalty — if they meet a new condition.



Employees who don't have access to an employer-sponsored retirement plan such as a 401(k) can open their own Individual Retirement Accounts (IRA). Most don't, though, but some states are now requiring employers to open an IRA for their employees.

The National Institute on Retirement Security (NIRS) reports that nearly 40 million people — representing 45 percent of working-age households — have no 401(k) or IRA plans. The Center for Retirement Research at Boston College discovered that roughly a third of these people would be primarily reliant on Social Security benefits for income, with many also having to use a safety net program such as Medicaid.

A retirement account is especially beneficial to low-income workers. According to the Schwartz Center for Economic Policy Analysis at the New School in New York, while about half of workers aged 25 to 64 in the top 10 percent of earners have access to an employer-sponsored

retirement plan, the number drops to 23 percent for the bottom 50 percent of earners.

Politicians discussed the possibility of a federal automatic IRA plan after a 2007 Brookings Institution report about the potential for universal retirement security was released. When it became apparent that no federal legislation would be approved, eight states passed legislation starting in 2017 to require employers who do not offer a retirement plan to automatically enroll workers in a Roth IRA and more states have followed.

Currently, California, Connecticut, Illinois, Maryland, Massachusetts, New Jersey, Oregon, and Washington have mandated programs and Maryland will start signing up employers this year. New York and Vermont have voluntary programs.

The following states also have introduced mandated Roth IRAs: Arizona, Colorado, Indiana, Iowa, Kentucky, Louisiana, Maine, Minnesota, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Rhode Island, Utah, Virginia, West Virginia, and Wisconsin.

Some of these plans assess penalties for employer non-compliance. For instance, in California, Illinois and Oregon, employers that do not offer a retirement savings program like a 401(k) but have more than a certain number of employees must enroll with the state program by a deadline or face a fine. In California that fine is \$250 for each employee.

Roth IRAs are funded with after-tax dollars and typically allow for withdrawals of contributions without penalties. This is extremely important if someone has an emergency medical expense. These funds also are por-



table, meaning that the employee can keep putting money into the account even if they change jobs.

The basic features in each of the mandatory state programs include:

- ✦ Employers who do not offer a tax-qualified retirement plan must automatically enroll their employees in a private sector payroll deduction Roth IRA.
- ✦ Employees may at any time opt out or choose a higher or lower contribution rate than the default of 3 or 5 percent, although California's rate is 8 percent.
- ✦ Employers cannot provide matching funds

since federal guidelines prevent anyone other than the individual account owner from contributing to the accounts.

- ✦ Employers have no fiduciary responsibilities since the state contracts for a private sector record-keeper/third-party administrator (TPA). The TPA manages the program and contracts with private sector asset managers to make low-risk investments.

One concern some observers have is that employers could decide it's enough to offer only Roth IRAs and not offer the kinds of IRAs that include employer contributions. ■

401(k) Withdrawal Penalties Suspended Again

In March 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act allowed people affected by the coronavirus to withdraw or borrow up to \$100,000 from their 401(k), Individual Retirement Arrangement (IRA) or similar account without a 10 percent penalty until the end of 2020. The exception was only for those who were diagnosed with COVID-19, had a spouse diagnosed with COVID-19 or had adverse financial consequences due to the disease.

In December 2020, Congress passed the Consolidated Appropriations Act of 2021. As part of the overall appropriations bill, lawmakers approved the COVID-Related Tax Relief Act of 2020. Part of that bill was the Coronavirus Related Distribution (CRD) Exception. The CRD gives employees and individuals the ability to withdraw or take a loan from their retirement accounts up to \$100,000. However, to qualify they must show they live in an area where a major disaster was declared. Areas that only have been affected by the COVID-19 pandemic are not included.

The CARES Act exception was popular. According to a national poll conducted by Kiplinger's Personal Finance and digital wealth man-



agement company Personal Capital, nearly 60 percent of Americans withdrew or borrowed money from an IRA or 401(k) during the pandemic, and nearly two-thirds used those retirement funds for basic living expenses.

While the penalty-free exception may sound like a good deal, financial planners say that taking funds out of your retirement account should be a last resort. For instance, if you took out \$100,000 from your account in March 2020, you would have missed the 66.88 percent stock market gain. ■

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