

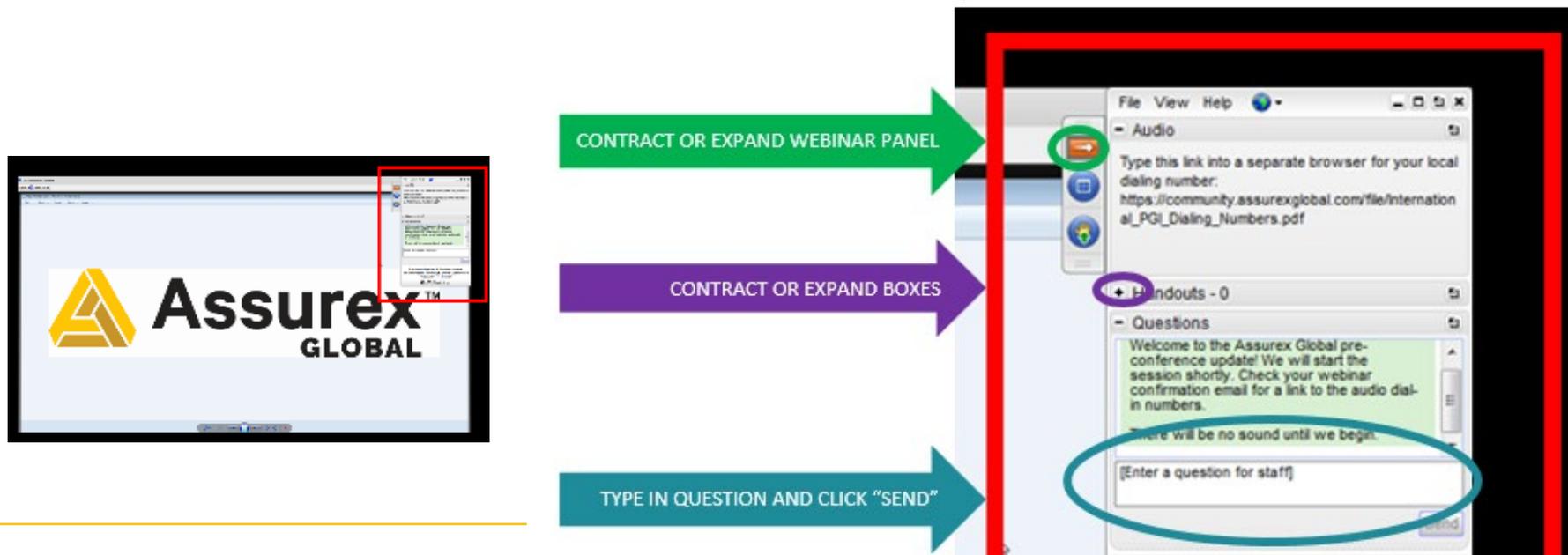
2020

2020 Wrap-up and Look Forward to 2021

Presented by Benefit Comply

2020 Wrap-up

- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
- You will be able to submit questions during the webinar by using the “Questions” or “Chat” box located on your webinar control panel.
- Slides can be printed from the webinar control panel – expand the “Handouts” section and click the file to download.



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Agenda

Review of 2020 Changes and Benefits Issues

Current Issues

Looking Ahead to 2021

Review of 2020

Review of 2020 Changes

Temporary Extended Deadlines

Required:

- HIPAA special enrollment notifications
- COBRA notifications, elections and payments
- ERISA claims filing deadlines (including FSA/HRA reimbursement)

Optional:

- Employer ERISA Notice and Disclosure Flexibility

Cafeteria Plan Changes

Optional Election Changes:

- Health coverage – add/increase, change plans, drop after attesting to other coverage
- FSA/DCAP – add/increase, drop/decrease

Cafeteria Plan Coverage Changes:

- FSA/DCAP reimbursement extension for non-calendar year plans or calendar year plans with grace periods
- FSA/HRA/HSA reimbursement of OTC without prescription and menstrual products
- Increased FSA carryover (\$550)

Review of 2020 Changes

Group Health Plan Coverage

Required:

- COVID-19 Diagnostic Testing
- Vaccination Coverage (**More Later**)

Optional:

- Allowed Changes That Do Not Impact HSA Eligibility
 - COVID-19 treatment with reduced cost-sharing
 - Telehealth coverage (Through 2021)

Group Health Plan Eligibility

Required:

- FFCRA paid emergency sick leave and extended FMLA for care of children - benefit eligibility and employer contributions must be maintained during the leave.

Important Court Cases in 2020

- Bostock v. Clayton County
 - SCOTUS ruled existing Title VII protection against employment discrimination based on sex should extend to discrimination based on an individual's sexual orientation or gender identity
 - Why it matters – restrictions or exclusions on gender identity-based coverage just got riskier for the employer
- Texas v. California

Texas v California

- Background
 - Suit brought by a number of Republican Attorneys General and joined by Trump Administration
 - Argued it was unconstitutional for Congress to zero out the individual mandate penalty (tax), and if the individual mandate is unconstitutional the entire ACA is unconstitutional
- Movement through the courts
 - District Court judge in Texas ruled in favor that entire ACA unconstitutional
 - Appellate court ruled just the individual mandate was unconstitutional and sent case back to District Court to revisit opinion that entire law must fall
 - SCOTUS took up case and heard oral arguments November 10th
- Possible Outcomes
 - \$0 Individual Mandate and ACA Constitutional – No change to existing law
 - \$0 Individual Mandate Unconstitutional but severable from ACA - Rest of the ACA stands
 - \$0 Individual Mandate Unconstitutional and not severable from other parts of ACA (subsidies, pre-existing conditions, etc.) - Severable from rest of ACA - rest of the ACA Stands
 - \$0 Individual Mandate Unconstitutional & not Severable from ACA - entire ACA falls
 - Sent Back to Lower Court

Current Issues

Employer Shared Responsibility (Employer Mandate) Issues

- Background
 - ALEs (averaged 50 or more FTEs) must offer affordable coverage to full time employees to avoid penalties and when using the look-back measurement method employees with 1,560 or more hours of service during the measurement period are considered full-time
- **Three Challenging Issues for Employers Who Furloughed or Temporarily Laid Off Employees in 2020**
 1. EEs subject to furloughs or layoffs may not be eligible for for the upcoming plan year
 - Employers may need to adjust eligibility rules for 2021 and 2022
 2. To determine full-time employer must count all hours that are paid
 - Includes paid leave and special unpaid leave (FMLA, USERRA and jury duty)
 3. 13-week break-in-service rehire provision
 - Employees brought back to work within 13 weeks must be treated as ongoing employee – not a new hire
 - Coverage effective 1st of month following reinstatement - No new waiting period

2020 Employer Reporting Update

- 2020 Filing
 - 1095s must be provided to employees and participants by Mar. 2 (delayed from Jan. 31)
 - 1094-C and Form 1095-Cs must be filed with the IRS by Feb. 28 (Mar. 31, if filed electronically)
 - Employers filing 250 or more Form 1095s are required to submit forms electronically
- Reminders
 - New transition relief for small employers (non-ALEs) offering self-funded medical coverage
 - Permitted to post on their website that 1095 statements are available to employees upon request
 - Unique reporting challenges this year
 - Breaks in Service
 - Reduced Hours

Form **1095-C**
Department of the Treasury
Internal Revenue Service

Employer-Provided Health Insurance Information
▶ Information about Form 1095-C

Part I Employee

1 Name of employee

2 Social Security number

3 Street address (including apartment no.)

4 City or town

5 State or province

6 ZIP code

Part II Employee Offer and Coverage

	All 12 Months	Jan	Feb
14 Offer of Coverage (enter required code)			
15 Employee Share of Lowest Cost Premium			\$

State Employer Individual Mandate Reporting

Existing State Reporting

- **New Jersey: March 2 (Ind); May 15 (State)**
- **Washington D.C.: March 2 (Ind); June 30 (State)**
- **Massachusetts: January 31 (Ind); March 31 (State)**

New Reporting in 2021

- **California: January 31 (Ind); March 31 (State)**
- **Rhode Island: January 31 (Ind); TBD (State)**

- Congress “zeroed out” the ACA individual mandate effective 1/1/2019
- Some “states begin to enact their own individual mandate tax
- Other states considering individual mandates
 - Vermont, Connecticut, Hawaii, Maryland, Minnesota, and Washington

State Employer Individual Mandate Reporting

- State Reporting Basics
 - Most states are accepting the same information that is already being submitted to the IRS
 - MA has its own form (HC-1099)
 - Requirements generally apply to out-of-state employers
 - In most states employers do not have to report for fully-insured plans if the carrier is providing the reporting



Check with your employer reporting vendor and/or carrier if you have employees in these states

Dependent Care Plan (DCAP) Administration Issues

- No Carryover of Unused Balances to Next Plan Year Allowed
- DCAP Changes Permitted
 - Changes are already relatively permissive
 - Daycare closes or reopens
 - Uses after-school care, but now need full-day care
 - Schools close and employee needs full-day childcare or opens so less is needed
 - Employee takes expanded FMLA to care for a child whose school has closed
 - Employee or Spouse loses job, is laid off or furloughed
 - Employee or spouse begins working from home and no longer needs childcare

Other Current Benefits Issues and Changes in 2020

- New COBRA Model Notice
 - <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra>
- New Summary of Benefits & Coverage (SBC) Template for Plan Years Starting 1/1/21
 - <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/summary-of-benefits>
- Remember that the PCORI Fee is back
 - Employers with self-insured plans (including HRAs) must report and pay by July 31st

Looking Ahead

Covid-19 Vaccine Coverage



- Health plans are required to cover cost of COVID-19 vaccinations with no cost sharing
 - Within 15 day after either being listed by the US Preventive Task Force or officially listed by the CDC
 - FDA emergency approval by itself does not trigger the 15-day requirement
 - Plan must cover in or out of network for length of HHS Public health emergency - after public health emergency plans are only required to cover in network
- Federal Gov. is covering much of the cost
 - Plans will be required to cover "admin" cost and pay for related costs such as the office visit required to receive the vaccine
- Grandfathered plans exempt

What to Expect in 2021

- New Legislation?
 - With a Republican Controlled Senate
 - Surprise billing restrictions
 - Some benefit related changes as part of COVID relief legislation
 - If Democrats Control Senate
 - Technical ACA Fixes
 - Individual “Public Option” on the Exchange
 - Broader benefits changes as part of COVID relief legislation
 - COBRA subsidy still possible
- What About the Courts?
 - SCOTUS Decision in the Texas v. California ACA Case

What to Expect in 2021

Possible Regulatory Action

- EEOC Wellness Guidance
- More Information about Health Care Pricing Transparency Regulations
- Additional Section 125 Flexibility
- Employer Reporting Simplification
- Changes to Contraceptive Coverage Rules
- Rollback of Expanded Association Health Plan Rules
- Adjustments to ICHRA Rules

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