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Compliance Connection

March 2022

Federal Compliance Update

Federal: DHS Ending COVID-19 Temporary Policy for Form I-9 Expired List B Identity Documents

Beginning May 1, 2022, the Department of Homeland Security (DHS) is ending the COVID-19 Temporary Policy for List B Identity Documents and employers will no longer be able to accept expired List B documents. DHS adopted the temporary policy in response to the difficulties many individuals had with renewing documents during the COVID-19 pandemic. DHS is ending this flexibility because document-issuing authorities have reopened and/or provided alternatives to in-person renewals so starting May 1, 2022, employers must only accept unexpired List B documents.

If an employee presented an expired List B document between May 1, 2020, and April 30, 2022, employers are required to update their Forms I-9 by July 31, 2022.

Read more about the temporary policy and see an [update requirements table](#) for an employee's Form I-9 on the I-9 Central USCIS [related page](#).

DOJ Issues Guidance on Web Accessibility and the ADA

On March 18, 2022, the U.S. Department of Justice (DOJ) issued new [guidance](#) on web accessibility requirements under the Americans with Disabilities Act (ADA). The new guidance describes how businesses that are open to the public and state and local governments can ensure that their websites are accessible to individuals with disabilities.

ADA and Web Accessibility

Under the Title III of the ADA, businesses open to the public must provide full and equal enjoyment of their goods, services, facilities, privileges, advantages, or accommodations to people with disabilities. Similarly, Title II of the ADA requires state and local governments to provide equal access to all services, programs and activities.

The DOJ, which enforces Titles II and III of the ADA, has consistently taken the position that these ADA requirements apply to web content. In the new guidance, the DOJ indicates that it will continue prioritizing web accessibility.

Website Design Resources

While acknowledging that no specific, enforceable standards apply to businesses or state and local governments, the DOJ guidance suggests that these entities follow the [Web Content Accessibility Guidelines](#) (WCAG) and [other standards](#) that apply to the federal government. The guidance also provides examples of common web accessibility issues and samples of enforcement actions the DOJ has taken against businesses in the past.

Common Website Issues

According to the DOJ, some barriers make it difficult or impossible for people with disabilities to use websites. Some examples include the use of poor contrast (which can make it difficult for those with limited vision to read) and mouse-only navigation (as some individuals may only be able to use keyboard navigation) and the lack of captions on videos for the hard of hearing.

Spending Bill Extends Telehealth Coverage for HDHPs

A [spending bill](#) signed into law on March 15, 2022, **extends the ability of high-deductible health plans (HDHPs) to provide benefits for telehealth or other remote care services before plan deductibles have been met** without jeopardizing health savings account (HSA) eligibility. This extension applies to any telehealth services from April 2022 through the end of the year.

Background

HSA contribution rules strictly limit the types of health plan coverage that eligible individuals may have. As a general rule, telemedicine programs that provide free or reduced-cost medical benefits before the HDHP deductible is satisfied are disqualifying coverage for purposes of HSA eligibility.

However, effective Jan. 1, 2020, for plan years beginning before Jan. 1, 2022, the [Coronavirus Aid, Relief and Economic Security Act](#) (CARES Act) allowed HDHPs to provide benefits for telehealth or other remote care services before plan deductibles have been met. This means that HDHPs could provide coverage for telehealth services before the required minimum deductible has been reached without jeopardizing plan participants' eligibility for HSA contributions. This rule expired for plan years beginning in 2022.

Impact of the Extension

Under the 2022 spending bill, HDHPs may choose to waive the deductible for any telehealth services from April 2022 through the end of the year without causing participants to lose HSA eligibility. This provision is optional; HDHPs can continue to choose to apply any telehealth services toward the deductible.

Note that telemedicine services provided between Jan. 1, 2022, and April 1, 2022, generally must still be counted toward the HDHP deductible to avoid jeopardizing participants' eligibility for HSA contributions.

DOL Issues Guidance on Unlawful Retaliation for Employee Leave

In a March 10, 2022, [Field Assistance Bulletin](#) on protecting workers from retaliation, the U.S. Department of Labor (DOL) provides examples of prohibited retaliation under the Family and Medical Leave Act (FMLA) and Executive Order (EO) 13706, "Establishing Paid Sick Leave for Federal Contractors," among other federal laws and orders enforced by the Wage and Hour Division (WHD).

Retaliation Under the FMLA

The Bulletin offers two examples of retaliation that would violate the FMLA. One involves a worker penalized for using FMLA leave to care for a child, and the other shows a worker whose hours are cut after taking FMLA leave for her own medical condition. In the first, the worker receives negative attendance points under his employer's no-fault attendance plan for each day of approved FMLA leave taken. The Bulletin says a WHD investigation would require the employer to remove the negative attendance points.

In the second example, the worker's scheduled hours are reduced after she takes approved FMLA leave on three occasions for migraine headaches that prevent her from working. The investigation results in a restoration of the worker's schedule, plus back pay and liquidated damages.

Retaliation Under EO 13706

EO 13706 requires federal contractors to provide covered employees with up to 56 hours of paid sick leave yearly, including for family care. In the example given in the Bulletin, a maintenance worker on a federal contract loses a promotion and has his schedule changed after he asks about the availability of paid sick leave to attend spousal medical appointments. The Bulletin says a WHD investigation could result in the promotion being granted, a restoration of the worker's original schedule and back wages.

Federal: Updated EEOC Guidance on Religious Accommodations and Vaccines

On March 1, 2022, the federal Equal Employment Opportunity Commission (EEOC) updated [section L](#) of its COVID-19 guidance about vaccinations and Title VII religious objections to COVID-19 vaccine requirements.

The EEOC enforces Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits employment discrimination based on religion. This includes a right for job applicants and employees to request an exception, called a religious or reasonable accommodation, from an employer requirement that conflicts with their sincerely held religious beliefs, practices, or observances. If an employer shows that it cannot reasonably accommodate an employee's religious beliefs, practices, or observances without undue hardship on its operations, then they are not required to grant the accommodation. Read more about [Section 12: Religious Discrimination](#) and EEOC [Guidelines on Discrimination Because of Religion](#).

Although other laws, such as the Religious Freedom Restoration Act, also may protect religious freedom in some circumstances, the EEOC's guidance only describes employment rights and obligations under Title VII and specifically addresses:

- That employees with a religious objection to getting the COVID-19 vaccine must tell their employer about it—when requesting an accommodation from getting it—and how.
- That generally, employers should accept an employee's assertion of their religious at face value but could make a factual inquiry for additional supporting information if it questions it.
- How an employer shows that it would be an "undue hardship" to accommodate an employee's request for religious accommodation.
- When an employer grants some employees a religious accommodation from a COVID-19 vaccination requirement because of their sincerely held religious beliefs, practices, or observances, it is not required to grant all such requests.
- When there is more than one reasonable accommodation that would effectively resolve the conflict between the vaccination requirement and the employee's sincerely held belief, etc., that an employer may choose which accommodation to offer.
- The obligation to provide religious accommodations absent undue hardship and that it is a continuing obligation that allows for changing circumstances.

State Compliance Update

California: Update to COVID-19 Workplace Safety Rules

On February 28, 2022, California Governor Gavin Newsom signed [Executive Order 5-2022](#) updating the Division of Occupational Safety and Health (Cal/OSHA) COVID-19 Emergency Temporary Standard (ETS) in keeping with the current California Department of Public Health (CDPH) [guidance](#).

In California, starting March 1, masks will no longer be required for unvaccinated workers indoors, consistent with the updated CDPH guidance, but will be strongly recommended for all individuals in most indoor settings. Employers must still provide a face covering if an employee requests one.

The order also extends the current ETS through May 5, 2022, to ensure the Occupational Safety and Health Standards Board has time to review the new guidance in anticipation of the next re-adoption.

Compliance Calendar

March

3/31 – Forms 1094-B, 1095-B, 1094-C, and 1095-C Filing Deadline (electronic filers)

April

4/12 – 2021 EEO-1 Component 1 Data Collection Opening

4/30 – Remove your OSHA Form 300A

May

5/2 – Form 941 Filing Deadline (1st Quarter)

5/17 – 2021 EEO-1 Component 1 Data Collection Deadline

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