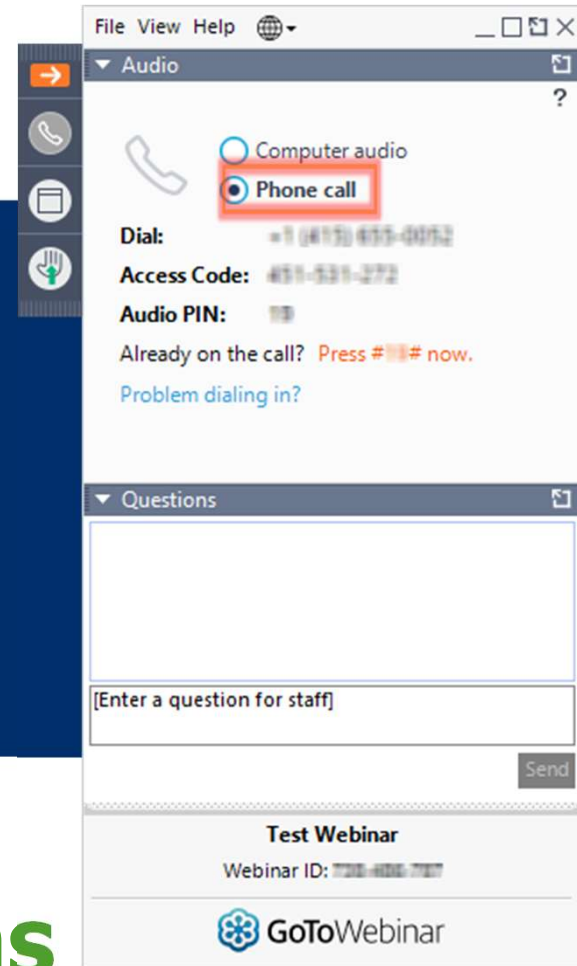




LIVE Webinar Part II:
**Continuing to Navigate COVID-Era
Regulations For Employers**

Thursday,
March 18, 2021
12:00 p.m. EST

- Select "Computer audio" to join via VOIP
- Select "Phone call" to dial in

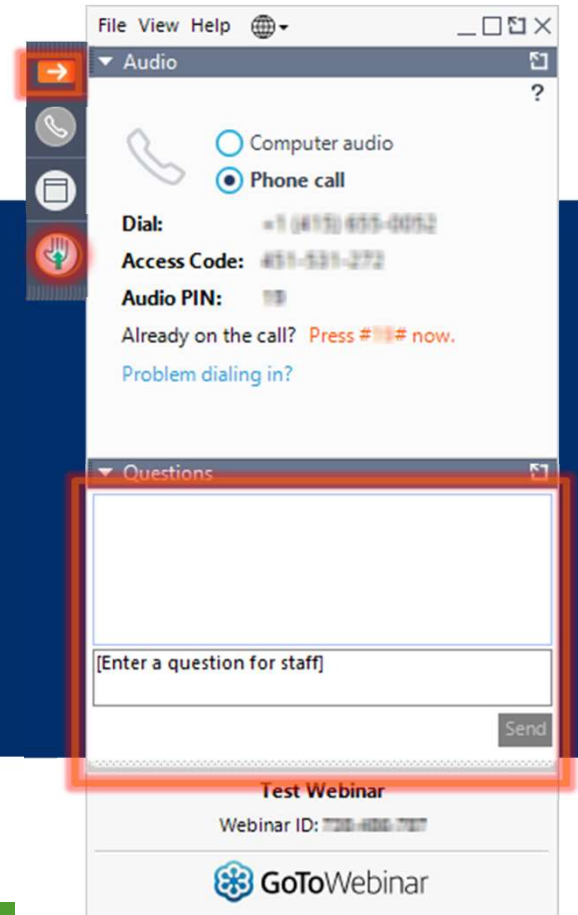


Audio Instructions

- Grab Tab
- Handouts
- Questions



Attendee Control Panel



Objectives

- COVID-19 employment law update including the status of the FFCRA and employee leave issues; the latest development related to COVID-19 vaccinations; and Federal unemployment benefits for employees refusing to work
- Social media issues for employers in the COVID-era
- Top employment law issues for the rest of 2021
- Review of COBRA subsidy required by ARPA
- Recent guidance regarding the Outbreak Period and how the one year time limit is creating challenges for plan administrators
- Update on rules for carryovers for health FSA and dependent care FSA accounts
- DOL guidance for plan fiduciaries regarding ESG investments



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Meet the Speakers

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Topics

- COVID-19 Update:
 - FFCRA and employee leave issues;
 - COVID-19 vaccinations;
 - Federal Unemployment Benefits;
- Social Media Issues in the COVID-era.
- Top employment issues for the rest of 2021

COVID-19 Update

- Families First Coronavirus Response Act (FFCRA) expired 12/31/2020
 - Employers may voluntarily elect to extend coverage until 3/31/2021;
 - Tax credit is available

COVID-19 Update

- Families First Coronavirus Response Act (FFCRA)
 - Updated by the American Rescue Plan Act of 2021
 - Extends tax credit to employers who uniformly provide leave to **all** employees;
 - Effective dates: April 1, 2021 to September 30, 2021

COVID-19 Update

- Families First Coronavirus Response Act (FFCRA)
 - **Adds** two (2) new reasons for FFCRA leave:
 - 1) obtaining an immunization related to COVID-19 or recovering from any injury, disability, illness or condition related to such immunization; or
 - 2) seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19, when such employee has been exposed to COVID-19 or the employer has requested such test or diagnosis
 - **Resets** leave allotment as of March 31, 2021:
 - Employees who already took 10 days may be provided with an additional 10 days of paid leave
 - **Increases** the total number of days of eligible paid family leave from 10 weeks (50 days) to 12 weeks (60 days)

COVID-19 Update

- **EEOC Guidance on COVID-19 Vaccinations**

- Issued 12/16/2020 - Key Points:

- Employers may have mandatory vaccination policies
 - Employees objections based on science or politics are not valid excuses
- Employers must make reasonable accommodations for employees who are unable to get the vaccination due to a disability or a sincerely held religious belief or practice

COVID-19 Update

- **EEOC Guidance on COVID-19 Vaccinations**
 - **Proposed** legislation in nine (9) states would prohibit state and local governments and private businesses from mandating Covid-19 vaccinations.

COVID-19 Update

EXAMPLES:

South Carolina:	"[E]mployers are prohibited from taking any adverse employment action against...any individual who exercises the right not to be vaccinated." Adverse employment action specifically includes "termination, suspension, involuntary reassignment, or demotion."
Washington:	Prohibits employer from requiring an employee to receive the Covid-19 vaccine "as a condition of employment" if they make a "verbal or written declaration of medical, philosophical, or religious objection."
Minnesota:	Felony for any "agent" of a "business" to "treat differently, single out, deny opportunity, ostracize, stigmatize, or discriminate against an individual as a result of the individual's decision on whether or not to receive a vaccine."

COVID-19 Update

- **EEOC Guidance on COVID-19 Vaccinations**
- New Mexico lawsuit filed over employer's COVID policies requiring vaccination.
 - Food and Drug Administration (FDA) approved the vaccine under an Emergency Use Authorization (EUA);
 - Under applicable statute, individuals to whom such vaccines are administered must be informed of the known and potential benefits and risks of its use "and of the option to accept or refuse administration of the [vaccine]"

COVID-19 Update

- **Federal Unemployment Benefits** - Pandemic Unemployment Assistance (PUA) program established by the Coronavirus Aid, Relief, and Economic Security (CARES) Act.
- Most states hold that a generalized fear of COVID-19 in the workplace is an insufficient basis to refuse work and still receive unemployment benefits;
- On February 25, 2021, the DOL issued new guidance related to a return to work under a scenario in which an individual feels unsafe.

COVID-19 Update

- Refusal to return to work or accept an offer of new work must be because the worksite is not in compliance with local, state, or federal health and safety standards related to COVID-19.
 - This includes, but is not limited to, failure to:
 - (1) require the use of facial mask,
 - (2) maintain physical distancing measures, or
 - (3) provide personal protective equipment consistent with public health guidelines
- Application for PUA is a process that requires only self-certification.
- PUA is 100 percent federally funded, and administered by state agencies.

Social Media Issues in the COVID-era

- *Boeing Company* balancing test:
 - (1) the nature and extent of the rule's potential impact on National Labor Relations Act ("NLRA") rights, and
 - (2) legitimate business justifications offered by the employer to support the rule.
- *Lutheran Heritage*: employees "reasonably construe" the rule or policy to prevent the exercise of NLRA rights

Top employment issues for the rest of 2021

- Changes at the NLRB in 2021
- Employer Takeaways

Top employment issues for the rest of 2021

- OSHA COVID Standard Expected
 - National Emphasis Program (NEP) released March 12, 2021
- Protecting the Right to Organize (PRO) Act
 - State Right to Work Laws
 - Employer Communication re Unionization
 - Mandatory Arbitration and Class Waivers
 - Independent Contractor – ABC Test
 - And more . . .



Employee Benefits & Executive Compensation



Employee Benefits

- American Rescue Plan Act of 2021 – signed March 11, 2021
- Outbreak Period Guidance – released February 26, 2021
- Consolidated Appropriations Act and Notice 2021-15 – released February 18, 2021
- Update on ESG investment rules – released March 10, 2021

American Rescue Plan Act of 2021

- 100% COBRA Subsidy
- Dependent Care Assistance
- Multiemployer Pension Plan Assistance
- Single Employer Pension Plan Relief

COBRA Subsidy

- Eligible individuals
- Amount of subsidy – 100% of COBRA premium
- April 1, 2021 to September 30, 2021
- Employees who terminated prior to April 1, 2021

COBRA Subsidy, cont.

- May allow a change to other plan options at same or lower cost (NOTE: OPTIONAL provision)
- Payment of subsidy
- Update of Model Notice – April 10, 2021
- New Model Notice for termination of subsidy – April 25, 2021

Dependent Care Assistance

- Prior limit - \$5,000
- Increased to \$10,500
- Limit increased from \$2,500 to \$5,250 for married filing single
- Retroactive amendment permitted

Multiemployer Pension Plans

- Special financial assistance available
- Must be in critical or declining status
- MEPP previously reduced benefits

Single Employer Pension Plans

- 2022 plan year
- Fresh Start - Minimum funding requirements calculated over 15 year period
- Future changes in unfunded liability subject to 15 year period
- Further interest rate stabilization

Outbreak Period

- EBSA Disaster Relief Notice 2021-01
- Timeframes subject to the Outbreak Period relief will have the applicable periods disregarded until the ***earlier of***–
 - One year from the date they were first eligible for relief, or
 - 60 days after the announced end of the National Emergency

Outbreak Period, cont.

- Example 1: Qualified beneficiary would have been required to make COBRA election by March 1, 2020 - that requirement is delayed until February 28, 2021.
- This is the earlier of one year from March 1, 2020 or the end of the Outbreak Period (which has not ended).

Outbreak Period, cont.

- Example 2: If a qualified beneficiary would have been required to make a COBRA election by March 1, 2021, that election requirement is delayed until the earlier of one year from that date (March 1, 2022) or the end of the Outbreak Period.
- If the Outbreak Period ends on July 1, 2021, the qualified beneficiary will not have until March 1, 2022, but rather must make the election within 60 days of July 1, 2021.

Outbreak Period, cont.

- Example 3: If a plan would have been required to furnish a notice or disclosure by March 1, 2020, the relief would end on February 28, 2021 and the notice or disclosure must be furnished on or before March 1, 2021.
- Plan fiduciaries are directed to make “reasonable accommodations” to prevent the loss/undue delay in payment of benefits because of COVID-19 reasons.
- DOL will focus enforcement on compliance assistance.

Consolidated Appropriations Act

- IRS Notice 2021-15 provides more guidance on requirements.
- Carryovers for Health FSA and Dependent Care FSA permitted.
- Elections under a Section 125 Plan may be applied only prospectively, but may be used for any expense incurred during the plan year beginning January 1, 2021 through December 31, 2021, even prior to enrollment.

Consolidated Appropriations Act, cont.

- Dependent Care FSA may extend the maximum age from 12 to 13 for eligible dependents who aged out of eligibility.
- Grace periods may be extended for up to 12 months after the end of 2021 or 2022.
- Health FSAs may permit employees who stopped participation in 2020 or 2021 to continue to receive reimbursements through the end of the plan year (including any grace period).

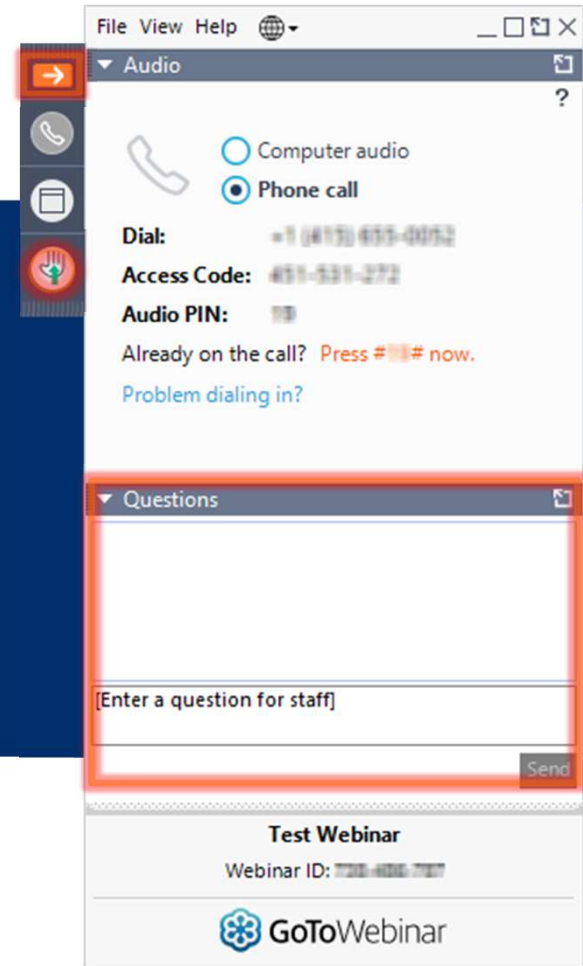
Consolidated Appropriations Act, cont.

- If an EE revokes a general purpose health FSA election and the plan does not permit expense reimbursement after the revocation, then HSA eligibility is not impacted.
- An EE may make a mid-year election change from a general purpose health FSA to a limited purpose FSA, and the maximum HSA contribution is determined based on the number of months of HSA eligibility.
- Maximum reimbursement for the combined health FSA is limited to the amount of salary reduction elected for the year subject to the \$2,750 limit plus any unused amounts from prior years.

ESG Guidance for Investment Funds

- DOL guidance from November prohibited fiduciaries from selecting ESG investments based on non-financial considerations.
- On March 10, the DOL announced it will not enforce the November rule until further guidance is published.
- The 2020 final rule still exists, so fiduciaries still must take care in selecting these investments.

Please type your message/question in the window pane of the attendee control panel.



Questions?



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Contact Us



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Monthly Minute Employee Benefits & Executive Compensation

By: Lisa Wintershimer Michel, John F. Meisenhelder, Helana A. Darrow, Antoinette L. Schindel, and Kelly E. MacDonald

Most of us are familiar with the changes related to COVID-19 legislation including the CARES Act. In this *Monthly Minute*, we are highlighting some practical CARES Act administrative items that you will want to consider as well as pre-pandemic benefits changes and issues that can help guide plan sponsors through the long road ahead.

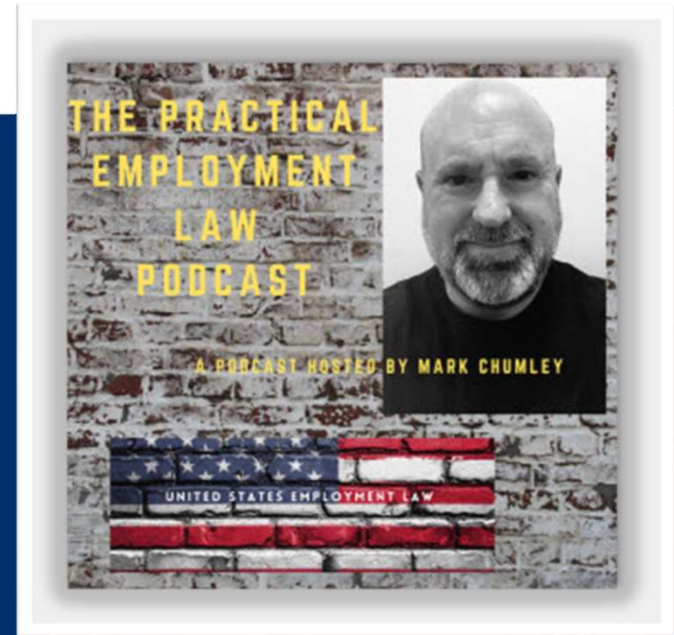


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More



Additional Resources



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