

NOVEMBER 27, 2023

SSG COMPLIANCE ADVISOR

What every HR leader should know about compliance.



2023 Year-end Checklist for Employee Benefit Plans

Although the end of the year is a busy time, employers should continue to prioritize compliance requirements for their employee benefit plans. There are several benefits-related tasks that employers should make sure are completed by the end of 2023, such as:

- Submitting a gag clause attestation for their health plans (or confirming that an issuer or third-party administrator (TPA) submits the attestation);
- Amending plan documents for discretionary changes made for 2023;
- Confirming annual notices have been provided, such as the Children's Health Insurance Plan (CHIP) notice; and
- Performing any necessary nondiscrimination testing.

In addition, employers should take steps to prepare for next year. For applicable large employers (ALEs), this includes making sure that health plan coverage will be affordable for full-time employees. Employers should also update employee benefit plan limits for 2024 and revise employee communications, such as summary plan descriptions (SPDs), for 2024 benefit changes.

This Compliance Overview contains a year-end compliance checklist for employee benefit plans.

LINKS AND RESOURCES

- Gag clause attestation [website](#)
- [Model notices](#) for group health plans, including the Women's Health and Cancer Rights Act (WHCRA) notice
- [Model CHIP notice](#)

Prepare for End of 2023

Tasks that may need to be completed by year-end include the following:

- Ensure gag clause attestation is submitted for the health plan;
- Remind employees about rules for unused balances in FSAs and HRAs;
- Send annual notices;
- Perform nondiscrimination testing; and
- Amend plan documents.

Prepare for Start of 2024

To prepare for 2024, employers should consider taking the following steps:

- Confirm health plan affordability (ALEs only);
- Update employee benefit limits;
- Prepare to file ACA returns electronically; and
- Update employee communications.

2023 Year-end Checklist for Employee Benefit Plans



Complete (or N/A)	Requirement
<input type="checkbox"/>	<p>Submit gag clause attestation by Dec. 31, 2023</p> <p>Health plans and health insurance issuers must annually submit an attestation of compliance with the federal prohibition on gag clauses. The first gag clause attestation is due by Dec. 31, 2023. If the issuer for a fully insured health plan provides the attestation, an employer does not also need to provide an attestation for the plan. Self insured employers can enter into written agreements with their TPAs to provide the attestation, but the legal responsibility remains with the health plan.</p>
<input type="checkbox"/>	<p>Confirm annual notices have been provided, including CHIP and WHCRA notices</p> <p>Many health plan notices are required to be provided at certain times during the year; for example, Medicare Part D creditable coverage notices must be provided by Oct. 14 each year. However, certain annual notices can be provided at any time during the year, such as the annual CHIP notice or Women’s Health and Cancer Rights Act (WHCRA) notice for health plans.</p>
<input type="checkbox"/>	<p>Amend plan documents for changes made in 2023</p> <p>In general, employers that make discretionary changes to the design of their employee benefit plans for plan years beginning in 2023 should update their official plan documents, if necessary, to include the changes by the end of the year.</p>
<input type="checkbox"/>	<p>Remind employees about what happens to unused funds in their health FSAs, HRAs or dependent care FSAs at the end of the year</p> <p>Encourage employees to use their unspent balances in these accounts, especially if unused funds are forfeited at the end of 2023. Also, remind employees about the deadlines for submitting claims for the year, including any runout period, as well as any grace periods for using unspent funds or permissible carryovers. If a health FSA or HRA allows unused funds to be carried over to the following year, remind employees about any caps on carryover amounts.</p>
<input type="checkbox"/>	<p>Complete nondiscrimination testing</p> <p>Complete annual nondiscrimination testing for employee benefit plans that are subject to these testing requirements, including Section 125 cafeteria plans, self-insured health plans, health FSAs, dependent care FSAs, HRAs, group term life insurance and retirement plans.</p>
<input type="checkbox"/>	<p>Ensure your health plan coverage will meet the ACA’s affordability requirement for 2024 (ALEs only).</p> <p>Under the ACA’s employer mandate rules, ALEs must offer affordable, minimum value (MV) health coverage to their full-time employees to avoid penalties. Health plan coverage is considered affordable if the employee’s required contribution does not exceed 9.5% of the employee’s household income for the year (as adjusted each year). For plan years beginning in 2024, the adjusted affordability percentage is 8.39%.</p> <p>The affordability test applies only to the portion of the annual premiums for self-only coverage and does not include any additional cost for family coverage. Also, if an employer offers multiple health coverage options, the affordability test applies to the lowest-cost option that provides MV.</p>

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<input type="checkbox"/>	<p>Update employee benefit limits for 2024</p> <p>Update benefit election and payroll systems for the 2024 plan limits and communicate the new limits to employees. Benefit limits that change for 2024 include the following:</p> <table border="1" data-bbox="240 583 1541 1434"> <tr> <td data-bbox="240 583 620 785" rowspan="3">HSA contribution limits</td> <td data-bbox="620 583 1024 653">Self-only HDHP coverage</td> <td data-bbox="1024 583 1541 653">\$4,150 (up from \$3,850)</td> </tr> <tr> <td data-bbox="620 653 1024 722">Family HDHP coverage</td> <td data-bbox="1024 653 1541 722">\$8,300 (up from \$7,750)</td> </tr> <tr> <td colspan="2" data-bbox="620 722 1541 785">Catch-up contribution limit (\$1,000) remains the same</td> </tr> <tr> <td data-bbox="240 785 620 919" rowspan="2">Health FSA limits</td> <td data-bbox="620 785 1024 854">Employee contribution limit</td> <td data-bbox="1024 785 1541 854">\$3,200 (up from \$3,050)</td> </tr> <tr> <td data-bbox="620 854 1024 919">Carryover limit</td> <td data-bbox="1024 854 1541 919">\$640 (up from \$610)</td> </tr> <tr> <td data-bbox="240 919 620 1054" rowspan="2">HDHP minimum deductible</td> <td data-bbox="620 919 1024 989">Self-only HDHP coverage</td> <td data-bbox="1024 919 1541 989">\$1,600 (up from \$1,500)</td> </tr> <tr> <td data-bbox="620 989 1024 1054">Family HDHP coverage</td> <td data-bbox="1024 989 1541 1054">\$3,200 (up from \$3,000)</td> </tr> <tr> <td data-bbox="240 1054 620 1188" rowspan="2">HDHP out-of-pocket maximum</td> <td data-bbox="620 1054 1024 1123">Self-only HDHP coverage</td> <td data-bbox="1024 1054 1541 1123">\$8,050 (up from \$7,500)</td> </tr> <tr> <td data-bbox="620 1123 1024 1188">Family HDHP coverage</td> <td data-bbox="1024 1123 1541 1188">\$16,100 (up from \$15,000)</td> </tr> <tr> <td data-bbox="240 1188 620 1323" rowspan="2">Qualified transportation fringe benefits (monthly limits)</td> <td data-bbox="620 1188 1024 1257">Transit pass and vanpooling</td> <td data-bbox="1024 1188 1541 1257">\$315 (up from \$300)</td> </tr> <tr> <td data-bbox="620 1257 1024 1323">Parking</td> <td data-bbox="1024 1257 1541 1323">\$315 (up from \$300)</td> </tr> <tr> <td data-bbox="240 1323 620 1434">401(k), 403(b) and 457(b) employee contribution limit</td> <td colspan="2" data-bbox="620 1323 1541 1434"> \$23,000 (up from \$22,500) Catch-up contribution limit (\$7,500) remains the same </td> </tr> </table>	HSA contribution limits	Self-only HDHP coverage	\$4,150 (up from \$3,850)	Family HDHP coverage	\$8,300 (up from \$7,750)	Catch-up contribution limit (\$1,000) remains the same		Health FSA limits	Employee contribution limit	\$3,200 (up from \$3,050)	Carryover limit	\$640 (up from \$610)	HDHP minimum deductible	Self-only HDHP coverage	\$1,600 (up from \$1,500)	Family HDHP coverage	\$3,200 (up from \$3,000)	HDHP out-of-pocket maximum	Self-only HDHP coverage	\$8,050 (up from \$7,500)	Family HDHP coverage	\$16,100 (up from \$15,000)	Qualified transportation fringe benefits (monthly limits)	Transit pass and vanpooling	\$315 (up from \$300)	Parking	\$315 (up from \$300)	401(k), 403(b) and 457(b) employee contribution limit	\$23,000 (up from \$22,500) Catch-up contribution limit (\$7,500) remains the same	
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<input type="checkbox"/>	<p>Prepare to file ACA returns electronically in 2024</p> <p>Beginning in 2024, virtually all employers who are subject to ACA reporting must file their returns electronically. Paper filing is only available to the smallest employers (i.e., those who file fewer than 10 information returns with the IRS for the year). A hardship waiver may be requested from the electronic filing requirement by submitting Form 8508 to the IRS.</p> <p>The normal deadline for electronic ACA reporting is March 31 each year. However, since March 31, 2024, is a Sunday, electronic returns must be filed by the next business day, which is April 1, 2024.</p> <p>ACA returns are filed electronically through the IRS' ACA Information Returns (AIR) Program. Due to this program's complexity, employers typically work with third-party vendors or payroll providers to complete their electronic filings.</p>																														

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<input type="checkbox"/>	<p>Revise employee communications, including SPDs, for 2024 benefit changes</p> <p>Communicate any benefit plan changes for the plan year beginning in 2024 to employees through an updated SPD or a summary of material modifications (SMM).</p>
<input type="checkbox"/>	<p>Reach out to your health plan’s issuer or TPA to confirm that the comparative analysis of NQTLs will be updated, if necessary, for 2024.</p> <p>The Mental Health Parity and Addiction Equity Act (MHPAEA) requires parity between a group health plan’s medical/surgical benefits and its mental health or substance use disorder (MH/SUD) benefits. Any nonquantitative treatment limitations (NQTLs) placed on MH/SUD benefits must comply with MHPAEA’s parity requirements. For example, NQTLs include prior authorization, step therapy protocols, network adequacy and medical necessity criteria.</p> <p>MHPAEA requires health plans and issuers to conduct comparative analyses of the NQTLs used for medical/surgical benefits compared to MH/SUD benefits. Plans and issuers must make their comparative analyses available upon request to specific federal agencies or applicable state authorities. Because MHPAEA compliance is a top enforcement priority for the U.S. Department of Labor, employers should ensure their health plans have an up-to-date comparative analysis.</p>
<input type="checkbox"/>	<p>Confirm that the health plan’s price comparison tool will cover all covered items, services and drugs for 2024.</p> <p>For plan years beginning in 2023, health plans and issuers were required to make an internet-based price comparison tool available for 500 shoppable items, services and drugs. For plan years beginning in 2024, this price comparison tool must be expanded to cover all covered items, services and drugs. Most employers rely on their issuers or TPAs to develop and maintain the price comparison tool. To ensure compliance, employers should make sure this responsibility is included in a written agreement with their issuer or TPA. In addition, self-insured employers should monitor their TPA’s compliance with this requirement. Unlike fully insured plans, the legal responsibility for this tool stays with a self-insured plan even if its TPA agrees to provide the price comparison tool on its behalf.</p>