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## Aon Publications on Federal Developments in 2021

### Insights and Summaries

#### *January 2022*

The year 2021 marked the second year profoundly impacted by the COVID-19 pandemic. Aon provided insights into numerous legislative and regulatory developments throughout 2021 that affected employers. Many of the developments consisted of efforts by the U.S. federal government and employers to ameliorate the impact of COVID-19 on the nation's economy, workforce, and health systems. As the year closed, the federal government's vaccine-or-test/mask mandate for employers with 100 or more employees, its federal contractor vaccination mandate, and its vaccination mandate for health care workers were still mired in litigation. Earlier in the year, employers grappled with whether to provide incentives for COVID-19 vaccinations, requirements for covering COVID-19 diagnostic testing and preventive services, providing employee leave for COVID-19 vaccinations, and many other COVID-19-related matters that affected the workplace.

In addition to pandemic issues, Aon tracked other developments in human resources and employer-provided health and retirement plans. The topics covered in Aon U.S. bulletins and white papers in 2021 included pooled employer plans, "no surprises" medical billing, pension funding relief, mental health parity, defined contribution plan fee litigation, health plan price transparency, pension risk transfer, USERRA paid military leave, prescription drug cost reporting requirements, alternative-type investments in retirement plans, nondiscrimination rules on sexual identity and gender identity, health savings accounts, and high-deductible health plans. This report gathers together Aon bulletins and white papers that highlighted significant developments in 2021, with direct links to the publications.

#### **January 2021**

##### ***Employers Get Surprise Medical Billing, Price Transparency Rules, and More in COVID-Relief Act***

On December 27, 2020, President Trump signed into law the Consolidated Appropriations Act of 2021 (CAA - H.R. 133). In addition to provisions for COVID-19 relief and for government spending for Fiscal Year 2021, the CAA includes provisions on employer group health and welfare plans relating to:

- Surprise medical billing;
- Price transparency and disclosure rules;
- Reporting on pharmacy benefits and prescription drug costs;
- Student loan extensions; and
- Mental health parity rules.

The Aon bulletin, which focuses on the group health and welfare plan provisions of the CAA, is available [here](#).

## ***President Trump Signs Funding Bill Into Law; Provides Delivery of FSA Relief***

On December 27, 2020, President Trump signed into law the CAA. Congress approved the legislation on December 21, 2020. The CAA provides for government spending and coronavirus relief, including temporary rules that allow employers to provide additional flexibility for health and dependent care flexible spending accounts (FSAs).

The Aon bulletin on H.R. 133 is available [here](#).

## ***EEOC Proposes New Wellness Regulations Under the ADA and GINA***

The U.S. Equal Employment Opportunity Commission (EEOC) has proposed new rules on how employers must design workplace wellness programs to comply with the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA).

The Aon bulletin, which discusses what employers need to know under the proposed regulations, is available [here](#).

## ***2021 Aon Compliance Calendar: Significant Retirement and Health & Welfare Due Dates***

Aon is pleased to present its 2021 *Compliance Calendar* to help plan sponsors identify significant compensation and benefit due dates for retirement and health and welfare plans. This *Compliance Calendar* includes relevant dates involving plan disclosures, contribution and distribution requirements, and various plan-related regulatory filings.

This *Compliance Calendar* assumes a plan administered on a calendar year basis by an employer with a calendar fiscal year. In general, the information for pension plans applies to single employer plans; other plans, such as multiemployer plans (e.g., Taft-Hartley plans) or government plans, may be subject to different requirements, and are not included. Additionally, certain compliance dates related to group health plan coverage or retiree prescription drug coverage have been included where applicable.

The *Compliance Calendar* is intended to alert the reader to some of the more significant dates for 2021 and is not intended to identify all compliance obligations or due dates.

The 2021 *Aon Compliance Calendar: Significant Retirement and Health & Welfare Due Dates* is available [here](#).

## ***HHS Again Renews COVID-19 Public Health Emergency Declaration***

On January 7, 2021, Secretary of Health and Human Services (HHS) Alex Azar again renewed the public health emergency (PHE) declaration. The renewal extends the declaration for another 90 days, until April 21, 2021, although the Secretary has the right to terminate the declaration prior to that expiration date.

The Aon bulletin on the renewal of the PHE is available [here](#).

## **2021 Medicare Part D Disclosure Reminder**

This Aon bulletin is a reminder of an **annual** disclosure requirement applicable to most employers that provide prescription drug coverage to individuals who are Medicare Part D-eligible. This disclosure is not new and should have occurred each year since 2006. The disclosure applies regardless of whether an employer provides retiree prescription drug benefits.

For 2021 calendar year plans, the disclosure must occur no later than March 1, 2021. The annual disclosure must occur for any employer that provides prescription drug coverage to anyone who is Medicare Part D-eligible.

The Aon bulletin is available [here](#).

## **Retirement Legal Consulting & Compliance Quarterly Update**

Our Retirement Legal Consulting & Compliance practice group's *Quarterly Update* highlighted legal developments for the first quarter of 2021 and included the following articles:

- Pooled Employer Plans Are Here!
- New IRS Guidance on Missing Participants With a Snapshot Reminder
- What's Safe for SECURE Act Safe Harbor Changes
- Final DOL Regulations on ESG Investment Issues
- Proxy Voting and Shareholder Rights — Final Fiduciary Rules
- Avoid Pitfalls — Ensure Regulatory Compliance
- Case Highlights Challenges in Recovery of Overpayments
- Final Plan Loan Rollover Regulations Provide Expected Relief
- Tax-Free Employer Payment of Student Loans Extended Until 2026
- Remote Notarization and Electronic Submissions Becoming a New Normal
- Quarterly Roundup of Other New Developments

The first quarter 2021 issue of the *Retirement Legal Consulting & Compliance Aon Quarterly Update* is available [here](#).

## **Frozen! Biden Administration Imposes Regulatory Freeze, Ices Wellness Regs and IC-HRA Rules**

As is common when there is a change in administrations, the Biden Administration imposed a regulatory freeze on all regulations and guidance recently released by its predecessor. This regulatory freeze will affect proposed and final regulations, such as the proposed wellness regulations announced

by the EEOC and the final regulations addressing Individual Coverage Health Reimbursement Arrangements (IC-HRAs) and the employer mandate.

The Aon bulletin on the regulatory freeze is available [here](#).

## February 2021

### ***Aon Publications on Federal Developments in 2020***

Every year, we take a look back at some of the prior year's Aon bulletins, white papers, newsletters, and reports that provided insights into significant developments affecting employee benefit plans and human resources. In a year uniquely disrupted by the 2019 Novel Coronavirus (COVID-19), Aon tracked the pandemic's growing impact on employers and provided insights into how new legislation, major court rulings, and regulatory developments in 2020 affected employer-provided health and retirement plans and human resource policies and practices. A link to the full text of each 2020 publication is provided.

The Aon bulletin is available [here](#).

### ***FAQs — Employer-Provided Incentives for COVID-19 Vaccinations***

An employer mandate that employees receive a COVID-19 vaccine as a condition of returning to the worksite represents a potentially difficult undertaking. As a result, employers are exploring the idea of incentivizing employees to get vaccinated for COVID-19.

The Aon bulletin, which contains high-level answers to some of the most frequently asked questions (FAQs) about vaccine incentive programs, is available [here](#).

### ***The Cafeteria Re-Opens! IRS Menu Offers More Flexibility (Again)***

The Internal Revenue Service (IRS) has issued more COVID-19-related relief that greatly expands employer flexibility in the design and operation of their cafeteria plans. The relief, issued in IRS Notice 2021-15, permits employers to give employees greater ability to change their cafeteria plan elections for health care FSAs, dependent care FSAs, and group health plan coverage.

The Aon bulletin, which provides an overview of the latest IRS guidance, is available [here](#).

## March 2021

### ***With Hours to Spare, DOL Extends COBRA, HIPAA, ERISA Deadlines***

With just hours to go before its 2020 guidance tolling certain COBRA, HIPAA, and ERISA deadlines expired, the Department of Labor (DOL) issued guidance extending the deadlines. The extended deadlines in Employment Benefits Security Administration (EBSA) Disaster Relief Notice 2021-01 provided relief for health and welfare plans, plan sponsors, and many participants and beneficiaries. The original relief tolled the counting of days within the Outbreak Period for purposes of meeting the deadlines. Notice 2021-01 extended the applicable deadlines until the earlier of: (a) one year from the

first date of eligibility for relief; or (b) if earlier, the end of the Outbreak Period (60 days after the end of the national emergency).

The Aon bulletin on EBSA Disaster Relief Notice 2021-01 is available [here](#).

## ***Departments Issue More FAQs on COVID-19 Diagnostic Testing and Coverage of Coronavirus Preventive Services***

The Departments of Labor, Health and Human Services, and the Treasury (the Departments) issued FAQs addressing implementation of the Families First Coronavirus Response Act, the Coronavirus Aid, Relief, and Economic Security Act, and other health care coverage issues related to COVID-19. The FAQs provide information and clarifications for employers and plans.

The Aon bulletin on the FAQs is available [here](#).

## ***RESCUE 4-1-1: Employer Health and Welfare Provisions in the American Rescue Plan Act***

The American Rescue Plan Act (ARPA), signed into law by President Biden on March 11, 2021, includes several provisions related to employer health and welfare plans, including:

- COBRA subsidies for employer-provided coverage;
- Increase in subsidies for individuals who purchase coverage in the Exchange marketplace; and
- Increase in the employer exclusion for dependent care assistance programs.

The Aon bulletin, which contains more information on each of these provisions, is available [here](#).

## ***IRS Says COVID-19 PPE Is Medical Care Under Code Section 213(d)***

On March 26, 2021, the IRS announced that amounts paid by an individual for personal protective equipment to prevent the spread of COVID-19 (COVID-19 PPE) are amounts paid for medical care under Internal Revenue Code Section 213(d). The IRS specified that COVID-19 PPE includes masks, hand sanitizer, and sanitizing wipes for use by an individual, an individual's spouse, or an individual's dependent(s). These expenses must have been incurred on or after January 1, 2020.

The Aon bulletin is available [here](#).

## **April 2021**

### ***Raising the DCSA Limit Creates Testing Issues for Employers***

The ARPA gives employers the option to raise the 2021 limit on contributions to dependent care spending accounts (DCSAs) to as much as \$10,500. Employers that exercise this option, however, should consider the potential impact to the nondiscrimination tests that DCSA plans must pass annually to retain the tax-qualified status of the DCSA.

This Aon bulletin discusses:

- ARPA's rules on the increased DCSA limit;
- The impact on the Utilization Test;
- The impact on the Eligibility Test; and
- Designing a mid-year increase.

The Aon bulletin is available [here](#).

### ***Departments Issue FAQs on Mental Health Parity Compliance***

On April 2, 2021, the Departments released additional FAQs guidance related to the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). This guidance is intended to provide additional information to employers and stakeholders on the enhanced MHPAEA requirements that were included in the CAA, 2021, signed into law late in 2020 related to non-quantitative treatment limits.

The Aon bulletin is available [here](#).

### ***DOL Issues Model COBRA Notices and FAQs for ARPA'S COBRA Subsidies***

The DOL has issued FAQs and model notice language to guide employers in implementing the COBRA subsidy provisions of the ARPA. ARPA provides temporary COBRA subsidies for employees who are involuntarily terminated (other than for gross misconduct) or experience a reduction in hours. The COBRA subsidy amount is 100% of the cost of COBRA coverage and is available from April 1, 2021, to September 30, 2021.

The Aon bulletin is available [here](#).

### ***IRS Issues More Guidance on Tax Credits for Paid Leave for COVID-19 Vaccinations***

The Treasury Department and the IRS has issued a fact sheet with additional details describing the refundable tax credit that is available to employers with fewer than 500 employees for sick and family leave paid to employees who take leave to receive or recover from COVID-19 vaccinations. The tax credit applies to amounts paid for leaves taken from April 1, 2021, through September 30, 2021. The ARPA allows employers with fewer than 500 employees and certain governmental employers to claim refundable tax credits that reimburse them for the cost of providing paid sick and family leave to their employees due to COVID-19, including leave taken by employees to receive or recover from COVID-19 vaccinations.

The Aon bulletin is available [here](#).

### ***Retirement Legal Consulting & Compliance Quarterly Update***

Our Retirement Legal Consulting & Compliance practice group's *Quarterly Update* highlighted legal developments for the second quarter of 2021 and included the following articles:

- ARPA to the Rescue — Significant Pension Funding Relief
- DOL Will Not Enforce Recent 2020 ESG and Proxy Voting Regulations

- DOL Issues Definitive Missing Participant Guidance
- DOL Continues to Pursue Payments to Missing Annuitants
- Marital Status: When Less is More
- Cybersecurity — GAO Report and New DOL Guidance
- Second Circuit Rejects Mandatory Arbitration of ERISA Claim
- Quarterly Roundup of Other New Developments

The second quarter 2021 issue of the *Retirement Legal Consulting & Compliance Aon Quarterly Update* is available [here](#).

## May 2021

### ***IRS Issues 2022 HSA Limits***

On May 10, 2021, the IRS issued inflation-adjusted limits for contributions to a health savings account (HSA) for calendar year 2022 (Revenue Procedure 2021-25). In addition, the IRS provided revised minimum deductible amounts and maximum out-of-pocket limits.

The Aon bulletin, which contains a chart providing the limits for calendar years 2020 through 2022, is available [here](#).

### ***Aon White Paper: Lump Sum Windows - Emerging Trends and New Opportunities Amidst a Pandemic***

This Aon white paper reviews emerging trends, highlighting active windows as a new strategy for employers to consider. We also review the evolution of lump sum windows and 2020 experience. There is a deep dive on election rate and rollover experience, as we analyze how the COVID-19 pandemic impacted results.

The *Lump Sum Windows - Emerging Trends and New Opportunities Amidst a Pandemic*, white paper is available [here](#).

### ***Aon White Paper: 2021 U.S. Pension Risk Transfer Annuity Settlement Market Update***

This Aon white paper summarizes 2020 transactions, trends in the market, an overview of the insurer landscape, and three interesting case studies demonstrating de-risking strategies in action. It also provides a look towards 2021.

The Aon *2021 U.S. Pension Risk Transfer Annuity Settlement Market Update*, white paper is available [here](#).

## ***Biden Administration Reinstates ACA Discrimination Rules on Sexual Orientation and Gender Identity***

Beginning May 10, 2021, HHS has reinstated the Affordable Care Act's (ACA's) Section 1557 prohibition against discrimination on the basis of sex to include discrimination on the basis of sexual orientation and gender identity.

HHS's updated interpretation of Section 1557's prohibition against discrimination on the basis of sex is consistent with the Supreme Court ruling in *Bostock v. Clayton County*. In *Bostock*, the Supreme Court held that Title VII of the 1964 Civil Rights Act's prohibition against sex discrimination includes discrimination on the basis of sexual orientation and gender identity. HHS also noted that, since *Bostock*, two federal courts have held Title IX's prohibition against sex discrimination, which is specifically referenced in Section 1557, must be read similarly. Section 1557 of the ACA prohibits individuals from being excluded from participation in, denied the benefits of, or subject to discrimination under any health programs or activities on the basis of race, color, national origin, sex, age, and disability.

The Aon bulletin is available [here](#).

## ***"A Plan's Gotta Know Its Limitations": HHS, IRS Announce 2022 Limits for OOP Costs, HSAs, and HDHPs***

HHS published its annual Notice of Benefit and Payment Parameters under the ACA, which, among various other provisions, sets the maximum annual amount of out-of-pocket (OOP) costs for plan participants. The final rule also established a special enrollment period for COBRA participants who experience a complete cessation of subsidized coverage.

Separately, the IRS announced the 2022 limits for individual HSA contributions, high-deductible health plan (HDHP) minimum deductibles, and HDHP OOP maximums, along with the excepted benefit health reimbursement arrangement limits for 2022.

The Aon bulletin is available [here](#).

## ***IRS Issues Guidance on ARPA's COBRA Subsidies***

The IRS issued its promised guidance on the ARPA's COBRA premium assistance subsidy. The guidance takes the form of 86 questions and answers on the ARPA COBRA subsidy rules.

ARPA provides temporary COBRA subsidies for employees who are involuntarily terminated (other than for gross misconduct) or experience a reduction in hours. The ARPA COBRA subsidy amount is 100% of the cost of COBRA coverage and is available from April 1, 2021, through September 30, 2021. Although the DOL previously issued guidance in the form of FAQs, the IRS FAQs address questions regarding the implementation and administration of the ARPA COBRA subsidies that have arisen in the interim.

The Aon bulletin is available [here](#).



## June 2021

### ***EEOC Issues Rules for Employers on COVID-19 Vaccine Mandates and Incentives***

The EEOC on May 28, 2021, released updated guidance for employers on COVID-19 vaccination mandates and incentives under various equal employment opportunity laws, including the ADA, GINA, and Title VII of the Civil Rights Act of 1964.

The EEOC guidance only addresses the application of equal employment opportunity laws to COVID-19 vaccination programs. Employers will have to review their COVID-19 vaccination programs for compliance with other laws, such as HIPAA and ERISA. The EEOC's guidance does not reflect the Centers for Disease Control and Prevention's guidance on fully vaccinated individuals and masking requirements.

The Aon bulletin is available [here](#).

### ***Out at Third – SCOTUS Dismisses Latest ACA Challenge, Holding Plaintiff States Lacked Standing to Bring Case***

The U.S. Supreme Court threw out the latest legal challenge to the ACA, holding that the plaintiffs did not have standing to bring the lawsuit. The plaintiffs — 18 states and two individuals — had challenged the constitutionality of the ACA after Congress zeroed out the individual mandate tax penalty in 2017.

The case, captioned *California v. Texas*, was the third major legal challenge to the ACA since its passage in 2010, following the challenges to the individual mandate in *NFIB v. Sebelius* in 2012 and to federal subsidies for the public Exchange in *King v. Burwell* in 2015.

The Aon bulletin is available [here](#).

## July 2021

### ***Departments Issue Interim Final Regulations Prohibiting Surprise Medical Bills***

Just six months ahead of the effective date for employer group health plans, the Departments have jointly issued interim final regulations (the IFR) implementing portions of the No Surprises Act, which was enacted as part of the 2021 CAA. The No Surprises Act is intended to protect patients from large "surprise" medical bills incurred from emergencies and from services and procedures that are performed by out-of-network providers at in-network facilities.

This Aon bulletin discusses the following provisions of the IFR as they relate to group health plans:

- Plans to which the requirements apply;
- Prohibition on preauthorization for emergency services;
- Determining cost-sharing amounts for participants;
- Out-of-network rate paid by plans;

- Notice and consent provisions; and
- Other provisions.

The bulletin is available [here](#).

### ***HHS Again Renews COVID-19 Public Health Emergency Declaration***

On July 19, 2021, Secretary of HHS Xavier Becerra again renewed the PHE declaration, extending the PHE for another 90 days through mid-October. The Secretary has the right to terminate the declaration prior to its expiration date.

The Aon bulletin on the renewal of the PHE is available [here](#).

### ***ACA Requires Employers to Provide HIV PrEP-Related Services Without Cost-Sharing***

On July 19, 2021, the Departments issued a new set of ACA implementation FAQs that clarify the scope of HIV pre-exposure prophylaxis (PrEP) benefits that must be provided without cost-sharing under the ACA's preventive services coverage mandate.

The Aon bulletin is available [here](#).

## **August 2021**

### ***Retirement Legal Consulting & Compliance Quarterly Update***

Our Retirement Legal Consulting & Compliance practice group's *Quarterly Update* highlighted legal developments for the third quarter of 2021 and included the following articles:

- Modernizing Section 127 for Today's Education Benefits
- Excessive DC Plan Fee Litigation: Mitigation Strategies
- Achieving Tax Certainty in an Era of IRS "No Ruling" Policies
- DOL Continues to Focus on Cybersecurity — Renewed Audit Efforts
- What Did I Hear You Say? New Guidance Regarding Audio Recordings Involving Plan Information
- Terminated DB Plan Excess Assets Can Fund DC Plan Match
- Actuarial Equivalence Lawsuits — Current State of Play
- Quarterly Roundup of Other New Developments
- Recent Publications

The third quarter 2021 issue of the *Retirement Legal Consulting & Compliance Aon Quarterly Update* is available [here](#).

## ***IRS Issues Additional ARPA COBRA Subsidy Guidance***

The IRS has issued a new set of COBRA FAQs regarding COBRA premium assistance for COBRA coverage under the ARPA. The new FAQs provide additional guidance regarding eligibility for COBRA premium assistance and how employers may claim the COBRA premium assistance tax credit. The 12 new FAQs supplement earlier guidance (Notice 2021-31) issued by the IRS in May 2021, which contained 86 FAQs.

The Aon bulletin is available [here](#).

## ***The Legal and Practical Implications of Charging Unvaccinated Employees More for Employer-Sponsored Medical Coverage***

Various news reports and opinion pieces have discussed whether employers can or should penalize employees who are not vaccinated against COVID-19 but participate in the employer's medical plan by charging those employees more for medical coverage. The short answer to this question is that an employer group health plan that charges unvaccinated plan participants more for health coverage may do so only if the plan satisfies the HIPAA wellness program requirements. The longer answer is more problematic. In complying with the HIPAA wellness program rules, an employer not only might fail to increase the COVID-19 vaccination rate among plan participants but might end up paying incentives to unvaccinated employees.

This Aon bulletin discusses the following issues:

- How does HIPAA regulate health plan surcharges?
- What are the different types of wellness programs under HIPAA?
- How do the HIPAA wellness plan rules apply to COVID-19 vaccination programs?

The Aon bulletin is available [here](#).

## ***Departments Delay Health Plan Price Transparency Rules, CAA Requirements***

The Departments issued a set of FAQs delaying enforcement of the ACA health plan price transparency rule issued in November 2020 and providing some delay and guidance for the health plan provisions in the CAA. The delays provide some relief for employers, who should continue planning with their insurance carriers and third-party administrators to ensure timely implementation of these rules.

This bulletin discusses:

- Background to the ACA and CAA Transparency Rules;
- The Departments' Delays in Guidance and Enforcement; and
- What Employers Need to Do Now.

The Aon bulletin is available [here](#).

## ***Affordability Percentage for ACA Employer Mandate Expected to Dip Slightly in 2022***

The IRS announced in Revenue Procedure 2021-36 that the required contribution percentage used by employers for complying with the ACA's employer mandate will decrease in plan years beginning in calendar year 2022. The Revenue Procedure was announced in the IRS's Weekly Internal Revenue Bulletin (IRB-2021-35) published on August 30, 2021.

The Aon bulletin is available [here](#).

## **September 2021**

### ***President Biden's Vaccine Mandate — What It Means for Employers***

On September 9, 2021, President Biden announced a series of actions designed to increase the number of Americans vaccinated against COVID-19. Most importantly for employers, the President's COVID-19 Action Plan (entitled "Path Out of the Pandemic") included a vaccination mandate for employers with 100 or more employees. Those employers were required to implement a mandatory vaccination program for employees that requires employees either to be vaccinated against COVID-19 or, for those employees who decline to be vaccinated, to undergo weekly testing for COVID-19. Employers were required to provide paid time off for vaccinations and recovery from those vaccinations.

The Aon bulletin is available [here](#).

## **October 2021**

### ***Departments Say HIPAA Permits Group Health Plan Surcharges, Discounts on COVID-19 Vaccinations***

The Departments issued FAQs providing guidance for employer group health plans on practices regarding COVID-19 treatments and services. Most significantly for employers contemplating vaccination incentives, the Departments stated that an employer group health plan may offer participants a premium discount — or, alternatively, impose a premium surcharge — regarding COVID-19 vaccinations, if the discount or surcharge meets the activity-based wellness program rules under HIPAA.

The Aon bulletin is available [here](#).

### ***Agencies Extend Deadlines for COBRA Elections and Payments***

The IRS, the DOL, and HHS (the Agencies) issued guidance (Notice 2021-58) extending deadlines for the election of COBRA coverage and the payment of COBRA premiums during the COVID-19 national emergency.

Under the current guidance, employer group health plans were subject to extensions on deadlines for ERISA claims, HIPAA special enrollment rights, and COBRA elections and payments. Notice 2021-58 made clear that the extensions for COBRA elections and payments should continue.

The Aon bulletin is available [here](#).

## ***SSA Releases 2022 Indexed Figures; Announces 5.9% Benefit Increase***

The Social Security Administration (SSA) released the Social Security 2022 indexed figures on October 13, 2021. The SSA announced that there will be a 5.9% Cost-of-Living Adjustment (COLA) for 2022. Some other changes that take effect in January of each year are based on the increase in average wages.

The Aon bulletin that covers the 2022 COLA and other relevant figures is available [here](#).

## ***HHS Again Renews COVID-19 Public Health Emergency Declaration***

On October 15, 2021, the Secretary of HHS Xavier Becerra again renewed the PHE declaration. The renewal extends the PHE for another 90 days, effective October 18, 2021, although the Secretary has the right to terminate the declaration prior to its expiration date.

The Aon bulletin is available [here](#).

## ***Departments Issue Second Set of Rules on “No Surprises” Medical Billing***

The Departments released the second set of interim final regulations (IFR Part II) implementing portions of the No Surprises Act, which was enacted as part of the 2021 CAA. The No Surprises Act was designed to protect patients from large “surprise” medical bills incurred from emergencies, from air ambulance services, and from services and procedures that are performed by out-of-network providers at in-network facilities.

The Aon bulletin discussed the following provisions of IFR Part II relating to employer group health plans:

- The federal Independent Dispute Resolution (IDR) process that nonparticipating providers and facilities subject to the No Surprises Act and group health plans may use if there is no resolution regarding fees after an open negotiation period;
- The time frames related to the IDR process, as well as fees; and
- Applicability of the external review process for participants to issues related to the No Surprises Act.

The Aon bulletin is available [here](#).

## ***EEOC Issues Additional Guidance for Employers on Religious Objections to Employer COVID-19 Vaccine Mandates***

The EEOC on October 25, 2021, issued updated guidance for employers on COVID-19 vaccine employer mandates and applicability of various equal employment opportunity laws, including religious objections under Title VII of the Civil Rights Act of 1964.

The Aon bulletin is available [here](#).

## November 2021

### ***Retirement Legal Consulting & Compliance Quarterly Update***

Our Retirement Legal Consulting & Compliance practice group's *Quarterly Update* highlighted legal developments for the fourth quarter of 2021 and included the following articles:

- Momentum Continues in the Pension Risk Transfer Market
- PEP's Are Here!
- Cybersecurity: Third-Party Service Providers Prepare to Respond
- Updated IRS Program Improves Self-Correction Options
- Possible New Life for Stranded VEBA Assets
- Investment in CITs Possible for Certain 403(b) Church Plans
- Quarterly Roundup of Other New Developments

The fourth quarter 2021 issue of the *Retirement Legal Consulting & Compliance Aon Quarterly Update* is available [here](#).

### ***Does USERRA Require Paid Military Leave? Some Federal Courts Seem to Think So***

Two U.S. Courts of Appeal have ruled that the Uniformed Services Employment and Reemployment Rights Act (USERRA) may require employers to provide paid leave to employees who are absent from work due to protected military leave, despite the absence of any provision in USERRA that specifically requires employers to provide such paid leave. These federal courts, which cover Illinois, Indiana, Wisconsin, Pennsylvania, New Jersey, Delaware, and the Virgin Islands, have held that USERRA's mandate that military leave be accorded the same "rights and benefits" as comparable nonmilitary leave may require an employer to provide paid military leave to the same extent that it provides paid leave for other absences, such as jury duty and sick leave.

This Aon bulletin discusses:

- The background on USERRA's obligations relating to military leave;
- The recent USERRA litigation;
- Determining whether USERRA leave is comparable to other types of leave; and
- What employers should do now.

The Aon bulletin is available [here](#).

## ***IRS 2022 Official Indexed Figures for Retirement Plans and Other Employee Benefit Plans***

The IRS issued Information Release 2021-216 on November 4, 2021, providing the 2022 official indexed figures for retirement plans and other employee benefit plans. The IRS issued technical guidance detailing these items in Notice 2021-61.

The Aon bulletin, which provides the official limits of most interest to large and medium employers, as well as the official 2022 key employee pay thresholds for top-heavy plans, is available [here](#).

## ***Biden Administration Releases Rules on Vaccinate-or-Test Mandate for Employers With at Least 100 Employees***

Employers with 100 or more employees have until January 4, 2022, to develop and implement policies requiring their employees either to be vaccinated against COVID-19 or submit to mandatory masking and weekly testing for COVID-19, under an Emergency Temporary Standard (ETS) issued by the Occupational Safety and Health Administration (OSHA).

The ETS provided that employers may impose either a mandatory vaccination policy or a policy giving employees the choice of either vaccination or weekly testing and mandatory masking. Employers that adopt the latter policy do not have to pay the costs of weekly testing for employees. However, the ETS imposed numerous record-keeping and documentation requirements on employers, set out rules on providing paid time off for employees to become vaccinated and recover from any side-effects, and subjected employers that fail to comply with the ETS to possible fines of up to \$13,653 per violation.

This Aon bulletin discusses:

- Determining Covered Employers and Employees
- Implementing Mandatory Vaccination and Vaccination-or-Testing/Masking Policies
- Determining an Employee's Vaccination Status — Proof, Records, and Acceptable Vaccines
- Paid Time Off for Vaccinations and Vaccine Side-Effects
- Testing Employees Under a Vaccination-or-Testing/Masking Policy
- Providing Policy Information to Employees
- Preemption, State Plans, and Additional Employer Measures
- Effective Dates

The Aon bulletin is available [here](#).

## ***IRS Issues 2022 Benefit Contribution Limits***

On November 10, 2021, the IRS issued Revenue Procedure 2021-45, updating the indexed limitations for certain employee benefit programs.

The Aon bulletin is available [here](#).

## ***Biden Administration Releases Rules on Vaccination Mandate for Health Care Providers***

Health care providers that participate in Medicare and Medicaid programs must require their staffs to be vaccinated against COVID-19 by January 4, 2022, according to an IFR released on November 4, 2021, by the Centers for Medicare & Medicaid Services (CMS).

CMS's IFR differed from the ETS issued by OSHA on the same day in two significant ways:

- CMS's IFR applied only to Medicare- and Medicaid-certified health care providers and suppliers; and
- CMS's IFR, unlike the OSHA ETS, did not offer providers the option of weekly testing for staff.

The IFR required providers and suppliers to receive the first dose of vaccination by December 6, 2021, and to complete the vaccination procedures by January 4, 2022, unless the staff member received an accommodation under federal civil rights laws.

The Aon bulletin is available [here](#).

## ***CMS Issues 2022 Medicare Premiums, Deductibles, and Coinsurance Amounts***

On November 12, 2021, CMS released the 2022 premiums, deductibles, and coinsurance amounts for the Medicare Part A and Part B programs.

The Aon bulletin, which provides additional details about the 2022 adjustments, is available [here](#).

## ***OSHA Suspends ETS Enforcement After 5th Circuit Blocks Mandate***

The OSHA vaccination mandate for employers with 100 or more employees expanded from the workplace to the courtroom as employers assessed the impact of several recent developments.

The Aon bulletin is available [here](#).

## **December 2021**

### ***Transparency Becomes Clearer: Departments Issue Regulations for Reporting Prescription Drug and Health Care Spending***

Employers that sponsor self-insured group health plans and health insurance issuers for fully insured plans will have to report information for prescription drug benefits and health care spending no later than December 27, 2022, for the 2020 and 2021 calendar years. After December 27, 2022, an annual file must be submitted by June 1 for the prior calendar year.

The Departments posted interim final regulations with request for comments in the *Federal Register* on November 23, 2021, primarily related to the prescription drug file requirement under the 2021 CAA. The purpose of this guidance is to enhance transparency on how prescription drugs contribute to the



cost of health coverage. Comments must be submitted to the Departments no later than January 24, 2022.

The Aon bulletin is available [here](#).

### ***Frozen III! Third Federal Mandate on Ice as District Court Blocks Vaccination Mandate for Federal Contractors***

A U.S. Federal District Court in Georgia has issued a nationwide injunction blocking the Biden Administration from enforcing its COVID-19 vaccine mandate for federal contractors.

With this decision, federal courts have now blocked all three vaccine mandates issued by the federal government from going into effect pending resolution of the various court cases, which could ultimately make their way to the United States Supreme Court.

The Aon bulletin is available [here](#).

### ***Federal Appeals Court Lifts Stay of OSHA's Vax-or-Test/Mask Mandate for Employers with 100+ Employees***

The Sixth Circuit Court of Appeals on December 17, 2021, dissolved the stay issued in November by the Fifth Circuit Court of Appeals that prevented OSHA from enforcing the ETS issued by OSHA on November 5, 2021.

OSHA's ETS mandate requires that companies with at least 100 employees require their employees by January 4, 2022, either to be vaccinated against the coronavirus or face weekly testing. The ETS also ordered those employers to require their unvaccinated employees to wear masks at the worksite starting December 5, 2021. The Sixth Circuit's three-judge panel held in a 2-1 decision that OSHA had the legal authority to issue the ETS mandate and that legal challenges against the mandate were likely to fail.

The Aon bulletin is available [here](#).

### ***2022 Limits for Benefit Plans***

Each year, the U.S. government adjusts the limits for retirement plans, Social Security, Medicare, and other benefit programs to reflect price and wage inflation, and changes in the law. As a result, employee benefit plans must be adapted annually to accommodate the new limits. All of the numbers in this report are official unless otherwise indicated.

The Aon bulletin is available [here](#).

### ***IRS Issues Adjusted PCORI Fee for Plan Sponsors***

On December 21, 2021, the IRS issued Notice 2022-04 announcing the applicable Patient-Centered Outcomes Research Institute (PCORI) fee for plan years that end on or after October 1, 2021, and before October 1, 2022 (e.g., the applicable PCORI fee for 2021 calendar year plans).

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