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Compliance Connection

January 2022 – Part III

Federal Compliance Update

Agencies Issue Guidance on Coverage of OTC COVID-19 Tests

On Jan. 10, 2022, the Depts. of Labor, Health and Human Services (HHS), and the Treasury issued [FAQ guidance](#) regarding the requirements for group health plans and health insurance issuers to cover over-the-counter (OTC) COVID-19 diagnostic tests.

Legal Requirements

Plans and issuers must cover the costs of COVID-19 tests during the COVID-19 public health emergency without imposing any cost-sharing requirements, prior authorization, or other medical management requirements.

Under guidance issued in June 2020, at-home COVID-19 tests had to be covered only if they were ordered by a health care provider who determined that the test was medically appropriate for the individual. At that time, the FDA had not yet authorized any at-home COVID-19 diagnostic tests. Since then, several types of OTC at-home tests have been approved.

As of Jan. 15, 2022, the cost of these tests must be covered, even if they are obtained without the involvement of a health care provider. However, the FAQs do not require tests to be covered if they are not for individualized diagnosis (such as tests for employment purposes).

Plan Options

Plans and insurance issuers may place some limits on coverage, such as:

- Requiring individuals to purchase a test and submit a claim for reimbursement, rather than providing direct coverage to sellers.
- Providing direct coverage through pharmacy networks or direct-to-consumer shipping programs and limiting reimbursements to other sources (the actual cost of the test, or \$12, whichever is lower).
- Setting limits on the number or frequency of OTC COVID-19 tests that are covered (no less than 8 tests per month or 30-day period).

Taking steps to prevent, detect, and address fraud and abuse.

Important Deadlines

Dec. 2, 2021: President Biden announced that guidance would be issued clarifying coverage of OTC COVID-19 tests.

Jan. 10, 2022: Federal agencies issued the guidance implementing the requirements for coverage of OTC COVID-19 tests.

Jan. 15, 2022: Deadline for plans and issuers to provide coverage for OTC COVID-19 tests available without a health care provider order or assessment.

Federal: Processing Vaccination Accommodation Requests under the ADA

On January 14, 2022, the Job Accommodation Network published [Processing Vaccination Accommodation Requests under the Americans with Disabilities Act](#) outlining a sample process for employers to determine whether they must grant a vaccination exception or delay as a reasonable accommodation under the ADA when employees are subject to a federal or state-imposed vaccination mandate or an employer policy. When an employee requests an accommodation and the disability and need for the accommodation are not obvious or already documented, the employer can require reasonable [medical documentation](#). There is no required ADA medical documentation request form, but the [Safer Federal Workforce](#) provides a [template](#) for federal employers that can be modified by other employers as needed.

Is the employee unable to be vaccinated for COVID-19 because of a [disability](#)?

- **No:** Deny the request under the ADA, apply other laws if appropriate, or follow usual policies.
- **Yes:** Can the employee safely work while unvaccinated in the current job and work environment?
 - **Yes:** Allow the vaccination exception or delay.
 - **No:** Can accommodations be provided to eliminate or reduce exposure risk to an acceptable level, absent undue hardship?
 - **Yes:** Grant the vaccination exception or delay and provide the accommodations.
 - **No:** Deny the request under the ADA, apply other laws if appropriate, or follow usual policies.

More information is located at [FAQ: COVID-19 Vaccination and the Americans with Disabilities Act](#).

Federal: OSHA Form 300A Must Be Posted by February 1: Compliance Reminder

Employers that had 11 or more employees at any point in 2021 are required to post Occupational Safety and Health Administration (OSHA) Form 300A from February 1 through April 30 unless they qualify as an exempt low-risk industry. A full list of exempt low-risk industries, ordered by North American Industry Classification System (NAICS) codes, can be found [here](#).

The employee count is based on the number of employees in the entire company, not per establishment. If the company is subject to routine recordkeeping requirements, records must be maintained for each physical establishment.

All covered employers are required to post Form 300A even if they didn't have any recordable incidents in 2021. (Recordable incidents are required to be maintained on the OSHA 300 Log of Work-Related Injuries and Illnesses.) OSHA Form 300A must be certified by a company executive and posted in a conspicuous location where notices to employees are customarily posted.

You can find resources on the platform by searching for *OSHA Recordkeeping*.

If your workplace is currently closed because of COVID-19, and you are unable to post the log there, we recommend posting it on your company intranet page, virtual bulletin board, or other location online where it can be easily seen and accessed by employees. If you return to the workplace before April 30, you should also physically post it at that time.

Form 300A Electronic Submission Required for Certain Employers by March 2

Employers must submit their 2021 Form 300A data to OSHA if they have 250 or more employees or have 20–249 employees and are in certain high-risk industries. Employers must use OSHA's online [Injury Tracking Application](#) (ITA). The deadline to submit the report is March 2, 2022.

The *electronic reporting* requirements are based on the size of the establishment (how many employees are at the physical location), not how many employees are in the entire company.

Employers that are required to send their Form 300A to OSHA must submit injury and illness data using the ITA online portal. This also applies to employers that are covered by a State Plan that has not yet adopted its own state rule.

Employers that meet any of the following criteria **DO NOT** have to send their information to OSHA:

- Employers that are exempt from OSHA's routine recordkeeping requirements, as mentioned above.
- Employers that never had 20 or more employees during the previous calendar year, regardless of industry.
- Employers that had between 20 and 249 employees at some point during the previous calendar year but are NOT on this [list](#) of high-risk industries.

Additional information, FAQs, and the Injury Tracking Application can be found on OSHA's site, [here](#).

Unemployment Insurance Claims Fraud Update for 1099G Forms

Employee's that had a fraudulent claim in 2021 are receiving a 1099G form. Here are the instructions that you can forward to your employees to help them get a corrected 1099G. They can't ignore this even though it's fraudulent. They are required to contact the Colorado Department of Labor and Employment and get a new 1099G with a zero balance to file with their taxes. Unfortunately, this is not an issue Lighthouse HR Support can resolve for them.

Identity Theft

Go to: <https://cdle.colorado.gov/tax-form-1099-g>

If you have received a 1099-G document from the Colorado Department of Labor and Employment but did not file a claim for unemployment benefits, you may be a victim of identity theft. Unfortunately,

fraudsters steal or purchase private information from illicit data brokers and use that information to file fraudulent unemployment claims. While we have a sophisticated multi-factor program in place to flag suspected fraud, no system is perfect.

Here's what you should do if you've received a 1099-G document from the Colorado Department of Labor and Employment but did not file a claim for unemployment benefits:

- Return to this page on or after February 1, 2022 to report it.
- Contact the three consumer credit bureaus and put a fraud alert on your name and Social Security Number (SSN). Credit Bureau Contact Info: **Equifax: 1-800-525-6285 | Experian: 1-888-397-3742 | TransUnion: 1-800-680-7289.**
- Create a file where you can keep records of this identity theft in one place.

Unemployment fraud rears its ugly head again with the receipt of 1099s	Need help with unemployment claims processing?
Need help reconciling your Quarterly Statement of Benefit Charges to make sure you receive proper credits?	Contact us for help!

State Compliance Update

Nothing to report...

Compliance Calendar

January

1/31 – Deadline to Distribute Forms 1095-B and 1095-C
1/31 – Form 940 Filing Deadline
1/31 – Form 941 Filing Deadline (fourth quarter)
1/31 – Forms W2 and 1099-MISC Distribution Deadline
1/31 – Forms W3 Filing Deadline

February

2/1 – Deadline for posting OSHA Form 300A
2/28 – Forms 1094-B, 1095-B, 1094-C, and 1095-C Filing Deadline (paper filers)

March

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

Disclaimer:

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