



535 Grand Avenue, Grand Junction, CO 81501
PO Box 1449, Grand Junction, CO 81502
970-243-7789 ♦ www.lighthousehrs.net

Compliance Connection

August 2021

Federal Compliance Update

COVID-19 Booster Shots

On August 18, 2021, the U.S. Department of Health and Human Services (HHS) released a statement on its plan for COVID-19 booster shots, “to maximize vaccine-induced protection and prolong its durability.” Subject to FDA approval, the booster—a third dose of either the Pfizer or Modern vaccine—will be offered starting September 20 and will first be available for those who were fully vaccinated eight months prior (January 2021). That way, those who were fully vaccinated earliest in the vaccination rollout, including many health care providers, nursing home residents, and other seniors, will likely be eligible for a booster. The HHS also anticipates booster shots are likely for people who received the Johnson & Johnson (J&J) vaccine, but its rollout didn’t start in the U.S. until March 2021, and the department is waiting for more data on J&J before announcing that booster plan.

New, Final Deadline Announced—EEO-1 Component 1 Reports Due October 25, 2021

On August 18, 2021, the EEOC announced that the new deadline for filers to submit and certify their 2019/2020 EEO-1 Component 1 data is Monday, October 25, 2021. This new deadline is final and all eligible filers must submit data by this date—there will be no additional changes to this filing deadline.

The EEOC encourages eligible employers to file the required EEO-1 Component 1 report(s) as soon as possible and specified that all filers will be able to file on October 25, 2021 and no one will be excluded.

OSHA Updates Coronavirus Guidance

On August 13, 2021, the Occupational Safety and Health Administration issued updated guidance to help employers protect workers from the coronavirus. The updated guidance reflects developments in science and data, including the Centers for Disease Control and Prevention’s updated COVID-19 guidance issued July 27, 2021.

The updated guidance expands information on appropriate measures for protecting workers in higher-risk workplaces with mixed-vaccination status workers, particularly for industries such as manufacturing; meat, seafood and poultry processing; high volume retail and grocery; and agricultural processing, where there is often prolonged close contact with other workers and/or non-workers.

OSHA’s latest guidance:

- Recommends that fully vaccinated workers in areas of substantial or high community transmission wear masks in order to protect unvaccinated workers;

- Recommends that fully vaccinated workers who have close contacts with people with coronavirus wear masks for up to 14 days unless they have a negative coronavirus test at least three to five days after such contact;
- Clarifies recommendations to protect unvaccinated workers and other at-risk workers in manufacturing, meat and poultry processing, seafood processing and agricultural processing; and
- Links to the latest guidance on K-12 schools and CDC statements on public transit.

According to OSHA, vaccination is the optimal step to protect workers and encourages employers to engage with workers and their representatives to implement multi-layered approaches to protect unvaccinated or otherwise at-risk workers from the coronavirus.

OSHA also reviews the COVID-19 Healthcare Emergency Temporary Standard every 30-days and its safeguards remain more important than ever. After reviewing the latest guidance, science and data, and consulting with the CDC and partners, OSHA determined the requirements of the healthcare ETS remain necessary to address the danger of the coronavirus in healthcare. OSHA will continue to monitor and assess the need for changes in the healthcare ETS each month.

COBRA Subsidy Expiration Notice Due by Sept. 15 (Sooner for Some)

The [American Rescue Plan Act](#) (ARPA) provides COBRA premium assistance to eligible individuals and imposes notice requirements on health plans. One such requirement is that plans must **notify eligible individuals about when their premium assistance ends**, and whether they may be eligible for regular COBRA coverage or coverage under another group health plan.

Background

The ARPA requires the full cost of COBRA premiums from **April 1, 2021, through Sept. 30, 2021**, to be subsidized for certain assistance-eligible individuals whose work hours were reduced or whose employment was involuntarily terminated. The subsidies are reimbursed directly to the employer, plan administrator, or insurance company (as applicable) through a COBRA subsidy tax credit.

Notice of Subsidy Expiration

The notice of premium subsidy expiration must be provided during the **45 - 15-day period** before an individual's subsidy expires. This means that, for individuals whose subsidy is expiring due to the end of the subsidy period, the notice must generally be provided from Aug. 16, 2021, to Sept. 15, 2021. Otherwise, the due date will depend on when an individual's maximum COBRA coverage period ends.

Plans are **not required** to issue an expiration notice to individuals whose subsidy is expiring because they became eligible for other group health plan coverage or Medicare.

Model Notice Available

The U.S. Department of Labor (DOL) has issued a **model notice of expiration of premium assistance** (Word / [PDF](#)) that can be used to satisfy this requirement. The model is also available in Spanish (Word / [PDF](#)).

Notice Content Requirements

The notice of premium subsidy expiration must be written in clear and understandable language, and inform recipients

- that the premium assistance will expire soon, prominently identifying the expiration date; and

- the individual may be eligible for coverage without premium assistance through regular COBRA coverage or coverage under a group health plan.

Supreme Court Blocks Biden's Eviction Moratorium

The Supreme Court recently [blocked](#) the Biden administration's [targeted eviction moratorium](#), which was issued on Aug. 3, 2021, by the Centers for Disease Control and Prevention (CDC). The moratorium temporarily halted evictions in counties with heightened levels of community transmission of COVID-19 and was set to expire on Oct. 3, 2021.

The CDC originally issued a renters protection moratorium in 2020 in response to the financial hardships created by the COVID-19 pandemic. The original protections were extended multiple times before expiring on July 31, 2021, prompting the targeted moratorium from the CDC.

After the targeted moratorium was issued on Aug. 3, it was challenged by a group of landlords that argued the CDC had exceeded its existing statutory authority by issuing the nationwide eviction ban. The Supreme Court agreed, ruling that if a federally imposed eviction moratorium were to continue, it must be authorized specifically by Congress.

Critics of the decision have argued it will put renters across the country at risk of eviction from their homes while potentially creating greater risk of community exposure to COVID-19.

What This Means

Renters no longer have federal protections provided by the eviction moratorium. However, many states currently have eviction moratoriums in place. Individuals should check for updates from local officials for more information.

During COVID, day-to-day operations move to the back burner such as ensuring professional licenses are maintained.	With extended unemployment programs coming to an end, many individuals will return to the workforce.
We provide continuous monitoring of professional licenses, criminal conviction, etc. among other crucial screenings.	Are you prepared

State Compliance Update

Colorado Board of Health Mandates Vaccinations for Healthcare Workers

On August 17, 2021, Governor Polis submitted a [letter](#) urging the State Board of Health to expedite processes to mandate COVID-19 vaccination for all personnel working in entities where people receive essential medical care. He further states this requirement is critical since the population entering these medical care facilities have little choice of being there or no choice to be treated by unvaccinated individuals. Further highlighted is the struggle between keeping staff healthy enough to work and working through already tightened labor markets and worker shortages.

On August 30, 2021, the Colorado Board of Health followed through with this request. All employees, direct contractors, and other staff in certain healthcare facilities (general hospitals, rehabilitation

facilities, community health centers, assisted living facilities, hospice organizations, acute treatment units, ambulatory surgical centers, etc., are now required to receive their first dose of the COVID-19 vaccination by September 30, 2021. Without significant change to the order, the second dose must be received no later than October 31, 2021.

More to come on any exemptions to the mandate such as religious and medical, personal choice, etc. and if other industries will follow suit.

Colorado Wage Act – Wage Theft and Healthy Families and Workplaces Act

COVID-19 and paid sick laws have dominated Colorado employment law energy over the last year and a half. However, employers also must be aware of the implications of not paying employees correctly to the business and to them personally.

According to the [INFO #11A](#) from the Colorado Department of Labor and Employment (CDLE), as of January 1, 2020, individuals may be liable for claims against unpaid wages under the Colorado Wage Act. Further, [Colorado House Bill 19-1267](#) states any employer or agent of an employer who willfully refuses to pay wages or compensation as provided in Article 4, etc., commits theft as defined in Section 18-4-401.

It is time to ensure companies accurately enforce and pay wages due under the Healthy Families and Workplaces Act including the Paid Sick Leave (PSL) and Public Health Emergency Leave (PHEL). Even if your organization employs less than 16 workers, you have liability and even more coming January 1, 2022.

Are you ready?

Compliance Calendar

September

9/30 – VETS-4212 Filing Deadline (federal contractors)

October

10/14 – Medicare Part D Creditable Coverage Notice

10/25 - 2019/2020 EEO-1 Component 1 Data Collection Deadline

November

11/1 – Form 941 Filing Deadline (third quarter)

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