From the HR Hotline

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Zywave's HR consultants continue to provide expertise and serve as a valuable resource for navigating the pressing challenges facing employers today. The HR Hotline team fields dozens of questions each day from employers seeking answers to their HR questions.

In recent months, employers have been seeking guidance on prescription drug data collection, employment verification, and legal requirements when terminating or suspending employment. While questions surrounding these topics can vary based on locality, employer and individual circumstances, federal agencies offer guidance that can aid employers in addressing day-to-day challenges in the workplace.

This article explores questions and answers to common HR situations.

What Is RxDC Reporting?

Group health plans and health insurance issuers must annually submit detailed information on prescription drug and health care spending to the Centers for Medicare and Medicaid Services (CMS). This reporting is referred to as the prescription drug data collection (or RxDC report).

The RxDC report comprises several files, including those that require specific plan-level information, such as plan year beginning and end dates and enrollment and premium data. It also includes files that require detailed information about medical and pharmacy benefits.

Most employers contract with third parties, such as issuers, third-party administrators (TPAs) and pharmacy benefit managers (PBMs), to submit RxDC reports on behalf of their health plans. Employers may work with multiple third parties to complete the RxDC report for their health plans. For example, a self-insured employer may use both its TPA and PBM to submit different portions of the RxDC report. A health plan's submission is considered complete if CMS receives all required files, regardless of who submits them.

RxDC Reporting

- Health plans and issuers are required to submit RxDC reports annually.
- Most employers rely on issuers, TPAs or PBMs to submit RxDC files for their health plans.
- The issuer (not the plan) violates the reporting requirements if they are required by written agreement to submit the RxDC report for a fully insured health plan but fail to do so.
- The reporting liability stays with a self-insured health plan, even if a third party contractually agrees to submit the required information.

When Is RxDC Reporting Due?

The next RxDC report is due by **Sunday, June 1, 2025**, covering data for 2024.

Employers should start reaching out to their issuers, TPAs or PBMs, as applicable, to confirm they will submit the RxDC files for their health plans by June 1, 2025. Employers should also confirm that their written agreements with these third parties address this reporting responsibility.

Also, employers will likely need to provide their third-party vendors with plan-specific information, such as enrollment and premium data, to complete their RxDC submission. Employers should watch for these vendor surveys and promptly provide the requested information. Because employers with self-funded plans are ultimately responsible for RxDC reporting, they should monitor their TPAs' or PBMs' compliance with this reporting requirement.

Reporting Resources

- RxDC reporting webpage (with links to reporting resources)
- Frequently Asked Questions
- Reporting instructions (updated January 2025, no changes from last year)
- User Manual for submitting RxDC reports

How Do We Manage Employee Benefits During Furloughs and Layoffs?

During periods of economic or business uncertainty, employers may need to downsize their workforce. Such reductions can take a variety of forms but frequently include employee layoffs or furloughs. Employers who take these measures must ensure they are in compliance with laws governing compensation and employee benefits. The following sections outline federal requirements related to benefits. As such, employers may also consider reviewing state and local laws for additional legal requirements when terminating or suspending employment.

Health Plan Coverage

Employers may continue active health plan coverage for furloughed employees, depending on their health plan's eligibility rules. For example, a health plan may require employees to work a minimum number of hours to be eligible for coverage and include rules for how to account for short-term leaves of absence, whether paid or unpaid. Employers should review the terms of their written plan documentation to determine the eligibility rules that apply to furloughed employees. Special coverage requirements apply to applicable large employers (ALEs) under the Affordable Care Act's (ACA) employer shared responsibility rules. In general, active health plan coverage for laid-off employees should be terminated, as they are no longer considered employees, although they may be eligible for continuation coverage.

Employers who want to expand eligibility for furloughed employees may have the option of amending their health plan's written terms to do so. However, employers should check with their insurance carriers, including a stop-loss insurance carrier, before expanding their health plan's eligibility rules. Employers who expand coverage outside the terms and conditions of the plan without consent from the insurer may face significant financial exposure.

In addition, during a furlough, employers may choose to pay the employees' share of premiums in full or in part. Employers who pay for employee premiums will need to comply with any applicable cafeteria plan rules and nondiscrimination requirements to ensure favorable tax treatment.

Employer Shared Responsibility Rules

As previously mentioned, the ACA requires ALEs to offer affordable, minimum-value health coverage to their full-time employees (and dependents) or potentially pay a penalty to the

IRS. ALEs are employers who averaged at least 50 full-time employees, including full-time equivalent employees, during the preceding calendar year.

Terminating group health coverage for a full-time employee during a furlough may trigger an employer shared responsibility penalty for an ALE if the employee is still considered to be employed by the employer. This is more likely to be an issue for ALEs that use the look-back measurement method to determine full-time employee status. Under the look-back measurement method, individuals determined to be full-time employees for a stability period must generally be offered coverage for the entire stability period as long as they remain employed. Upon layoff, an employee is no longer considered employed, so there is no obligation under the ACA's employer shared responsibility rules for an ALE to continue active health coverage.

In addition, ALEs that maintain coverage during a furlough must ensure that the coverage remains affordable, as defined by the ACA, to avoid penalties. Depending on the circumstances, this may require an increased employer subsidy.

COBRA and State Continuation Coverage

If active health plan coverage terminates due to a furlough or layoff, employees may have the right to continue their coverage under federal or state continuation coverage laws. The Consolidated Omnibus Budget Reconciliation Act (COBRA) is a federal law that requires covered group health plans to offer continuation coverage to employees, spouses and dependent children when their coverage would otherwise end due to certain specific events, called qualifying events. Both termination of employment and a reduction in hours of service that causes a loss of eligibility for coverage are considered COBRA-qualifying events that would entitle an employee (and any covered dependents) to elect up to 18 months of COBRA continuation coverage. Employers should provide a COBRA election notice when employees lose coverage due to layoff or furlough.

Although COBRA only applies to health plans maintained by employers with 20 or more employees, most states have their own continuation coverage laws that apply to insured group health plans of smaller employers. If state continuation coverage rights apply, employers should ensure the required notices are provided to furloughed or laid-off employees.

Group health plans can require qualified beneficiaries to pay for COBRA continuation coverage, although employers can choose to provide continuation coverage at reduced or no cost. In general, the maximum amount charged to qualified beneficiaries cannot exceed 102% of the cost of the plan for similarly situated individuals covered under the plan who have not incurred a qualifying event.

Unemployment Compensation

Employers that continue health coverage for laid-off or furloughed employees do not automatically jeopardize their employees' eligibility for unemployment benefits. In many cases, such employees (including employees who are working reduced hours, typically a reduction of more than 50%) are eligible for unemployment benefits. Eligibility for unemployment benefits is generally determined by state unemployment insurance programs rather than federal law. Therefore, employees are encouraged to contact their state's unemployment insurance program for questions regarding eligibility and benefits.

Resources

- U.S. Department of Labor (DOL) unemployment insurance guidance
- WARN Act employer guide
- DOL FAQs on COBRA continuation coverage
- IRS guidance on the ACA's employer shared responsibility rules

Are We Required to Use the New Form I-9?

On April 2, 2025, the U.S. Citizenship and Immigration Services (USCIS) updated its Employment Eligibility Verification form (Form I-9) and the Department of Homeland Security Privacy Notice in the form's instructions to align with statutory language. The revised Form I-9 is dated "01/20/25" and has an expiration date of "05/31/2027." **Multiple previous editions of Form I-9 remain valid until their respective expiration dates.**

The updated Form I-9 is currently available for employers to use. Additionally, employers may continue to use prior editions of the form until their respective expiration dates:

- Form I-9 (08/01/23 edition) is valid until May 31, 2027; and
- Form I-9 (08/01/23 edition) is valid until July 31, 2026 (employers using this form must update their electronic systems with the May 31, 2027, expiration date by July 31, 2026).

Key Updates

Key updates to the Form I-9 include:

- Renaming the fourth checkbox in Section 1 to "An alien authorized to work"
- Changing "gender" to "sex" in the description of two List B documents in the Lists of Acceptable Documents
- Adding statutory language and a revised DHS Privacy Notice to the instructions

As of April 3, 2025, the Citizenship Status selection during case creation in E-Verify and E-Verify+ changed from "A noncitizen authorized to work" to "An alien authorized to work." However, employers should note that if an employee attests on Form I-9 as "A noncitizen authorized to work," the employer must select "An alien authorized to work" in E-Verify. E-Verify cases will display "An alien authorized to work," while employees and employers may continue to see "A noncitizen authorized to work" on Form I-9, depending on the form edition being used.

Takeaway

Employers should ensure that the updated Form I-9 is incorporated into their employment verification process by July 31, 2026. Employers can find more information and additional resources by visiting the USCIS' I-9 Central.

Which Employers Does the WARN Act Apply To?

The Worker Adjustment and Retraining Notification (WARN) Act is a federal law that requires covered employers to provide written notice at least 60 days before a plant closing or mass layoff unless an exception applies. This notice is intended to protect workers by giving them time to seek alternative jobs or obtain job training before termination. Employers who fail to comply with the WARN Act may be liable for back pay and benefits, in addition to civil monetary penalties, for the period during which notice was not given.

A company is subject to the WARN Act if it meets either of the following:

- The company has **100 or more full-time employees,** excluding employees who work fewer than 20 hours per week and employees who have been employed for less than six months.
- The company has **100 or more employees,** including part-time employees, who, in the aggregate, work at least **4,000 hours per week** (excluding overtime hours).

The law covers private employers, both for-profit and nonprofit. Public and "quasi-public" entities that engage in business and are separately organized from the regular government are also covered. Regular federal, state and local government entities that provide public services are not covered by the WARN Act.

Mini-WARN Acts

A number of states have enacted "mini-WARN Acts." State mini-WARN Acts generally expand upon or add to the employer obligations under the federal WARN Act. However, the laws vary significantly, so employers should carefully review their obligations on a state-by-state basis.

Employers considering a plant closing, mass layoff, relocation or similar action should carefully review the mini-WARN Acts in the states where they have employees. Both the federal WARN Act and the state mini-WARN Acts may carry substantial penalties for noncompliance, so it is critical that employers understand their obligations. These laws can be complicated, so employers may need to engage local counsel in navigating the laws and their application to an employer's particular circumstances.

Employers should note that compliance requirements vary by locality, and they should contact local legal counsel for legal advice. We'll keep you apprised of noteworthy updates on these topics. For resources on any of these topics discussed, contact us today.

The HR Hotline can provide general guidance but cannot provide tax advice or review plan documents for compliance.