



Everything You Need to Know Concerning COVID-19

March 24, 2020

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Update

- The Coronavirus (COVID-19) situation evolves every day
- Many compliance changes will occur in days and weeks to come
- It's important to keep aware of changing guidance from Federal, State and Local agencies and authorities
- There will be changes to employer benefits based on federal and state regulation that will have short term and long term effect on brokers, their employer clients and employees.

Employers

- Insurance Carriers are issuing bulletins daily dealing with their procedures. Each carrier will have a different set of guidelines based on state specific and carrier specific regulations
- Plan Documents – Cannot reduce coverage mid year.
 - Must give 60 day notice for material modifications
 - Plan document- ERISA Wrap, SPD
- State Laws – Small group continuation laws by state. Federal COBRA
- Special Enrollment Periods on Marketplace
- Workers Compensation – if employee contracts COVID-19 at workplace, it is reportable event under OSHA guidance (Healthcare workers)

Employer Questions

Q: If employees are no longer working or changed to part-time do they lose health plan coverage?

A: It depends. Your plan document will determine if and for how long employees are eligible for benefits.

- Employees who are terminated will experience a COBRA-qualifying event. Terminated employees are responsible for paying COBRA premiums.
 - Employers have the discretion on whether they want to subsidize employee COBRA premiums but should use caution when exercising this right as it should be done in a matter that is uniform for employees.
 - If a COBRA event occurs, and a COBRA election notice must be sent.
- Employees whose hours are reduced will experience a COBRA-qualifying event.
 - Employees who experience a COBRA event must be sent a COBRA notice.
 - Rather than requiring employees to elect COBRA, **Self-funded** employers may amend plan eligibility to allow part-time employees to be benefit eligible.
 - **Fully-insured** employers should verify eligibility status and requirements for changing eligibility on the fully-insured plan with the carriers before offering fully-insured benefits to part-time employees.

Employer Questions

Q: Do we need to pay employees if we close temporarily?

- **A:** Generally speaking, no because non-exempt employees need only be paid for hours worked. If employers do not want to have employees go unpaid, they may at their discretion pay employees, or allow or require employees to use accrued paid time off to make up missed wages.
 - Exempt employees must be paid unless the work location is closed for an entire seven-day work week and employees are not working from home.
 - As with non-exempt employees, employers may allow or require employees to use accrued paid time to make up missed wages.
 - Note that certain employment contracts and/or collective bargaining agreements may require employers to continue to pay wages.
- Some employees may qualify for unemployment insurance if laid off due to the COVID-19 outbreak. The Department of Labor (DOL) on its Coronavirus Resources [webpage](#) states that federal law permits significant flexibility for states to amend their laws to provide unemployment insurance in scenarios related to COVID-19. The DOL provides these examples:
 - An employer temporarily ceases operations due to COVID-19, preventing employees from coming to work;
 - An individual is quarantined with the expectation of returning to work after the quarantine is over; and
 - An individual leaves employment due to a risk of exposure or infection or to care for a family member.
- For more information on new guidance for state unemployment during the COVID-19 outbreak click [here](#).

Furlough, Laid Off, Leave of Absence

- Furlough - An employee furlough is a mandatory suspension from work without pay. It can be as brief or as long as the employer wants.
 - Furloughed employees have an expectation that they will return to work. Typically, an employer will give furloughed employees a specific date for resuming duties.
- Laid-Off – A laid off worker is someone who lost or left their job because the employer has closed or moved, there was insufficient work for them to do, or their position was eliminated.
- Leave of Absence (LOA) – Whether the leave is paid or unpaid is an important factor as it relates to benefits.
- Paid Leave - Generally, paid leaves of absence are given at the request of the employer.
- Unpaid Leave – Unpaid leaves are generally at the request of the employee.

Enrollment in Federal or State Based Exchanges

- State based exchanges are creating a Special Enrollment Period (SEP) for people who are looking for coverage as a result on the COVID-19 pandemic.
 - Colorado, Connecticut, Maryland, Massachusetts, Nevada, New York, Rhode Island and Washington have all reopened their exchanges to allow people to sign up for coverage.
- CMS has indicated that the FFM is not offering a special enrollment period due to the COVID-19 crisis.
 - They are encouraging people to check whether they qualify for a special enrollment period for other reasons, like a job loss that ends their health coverage.

COBRA and State Continuation

- There have been many inquiries from employers and brokers as to whether or not employees have to be offered continuation if they are no longer “actively at work” or no longer eligible for coverage.
 - Employers are hoping layoffs will be temporary and would rather not go through the administrative paperwork of taking people off the plans and then reinstating them a few weeks later.
- We can only advise you at this point, that a few states and/or carriers are making the decision to keep laid-off employees on the plan even though they are not “actively at work.”
- For those employees in those situations, Federal COBRA or state continuation may be available. As you know, reduction of hours or termination are “triggering events” which allow for coverage to be continued.
- It is always best to keep checking with your state’s department of insurance or the insurance carrier.
- Department of Insurance: Mandate or suggesting?



Coverage for Testing

- Many insurance carriers have already instituted new provisions allowing for no cost-sharing for the testing for the COVID-19 virus as have individual states.
- It is important to note that the no cost sharing rule applies only to the testing for the virus and NOT for the treatment.
- Coverage for treatment will follow the specific parameters of the plan design of the group health plan in place.

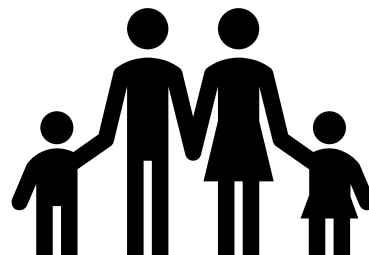


Families First Coronavirus Response Act (FFCRA)

- President signed the bill into law on March 18, 2020 with an effective date of April 2, 2020.
- Applies to employers with less than 500 employees.
- Employers with less than 50 employees are currently included but Secretary of Labor has the authority to exempt those employers.
- Provides for both Emergency Family Medical Leave and Emergency Paid Sick Leave.
- The Act will sunset on December 31, 2020

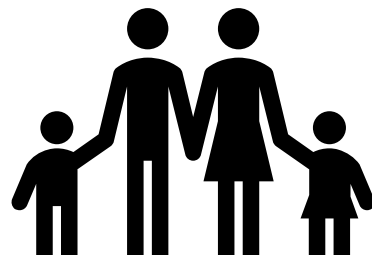
Emergency Family Medical Leave Expansion Act

- Employers with fewer than 500 employees
- Employee must have worked for 30 calendar days prior to leave
- There must be “Qualifying Need” which includes:
 - Employee unable to work (or telework) due to need to care for a minor child if the school or place of childcare has been closed or is unavailable due to public health emergency.
- First 10 days are unpaid (but can use accrued PTO/sick/vacation time)
- 12 weeks (including first 10 unpaid days) of paid leave at 2/3 normal rate up to a maximum of \$200/day with a \$10,000 aggregate.



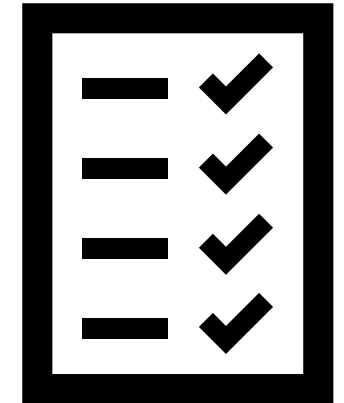
Emergency Family Medical Leave Expansion Act

- Job Protection
- Part-time employees would be entitled to be paid based on the average number of hours he/she worked in the prior 6 months.
- The employer will receive a tax credit that offsets 100% of his/her costs for providing mandated paid family leave.
- Tax credit
- There is some possibility that the cap of 500 employees will be removed.
- The Federal vs. State Family and Medical Leave laws To review information about individual state family and medical leave laws: [California](#), [Connecticut](#), [Hawaii](#), [Maine](#), [Minnesota](#), [New Jersey](#), [Oregon](#), [Rhode Island](#), [Vermont](#), [Washington](#), and [Wisconsin](#) and the [District of Columbia](#).



Emergency Paid Sick Leave Act

- Employers with fewer than 500 employees
- Any employee is eligible
 - Full-time employees will be entitled to a maximum of **80 hours of paid sick leave**.
 - Part-time employees will be entitled to leave based on the average number of hours they worked for the six months prior to taking this paid sick leave.
- The following criteria are in place for an employee to be paid sick time:
 1. The employee being quarantined or isolated by order of federal, state or local authority.
 2. The employee has been advised by a health care provider to self-quarantine.
 3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
 4. The employee is caring for an individual who is subject to similar guidelines.
 5. The employee is caring for a son or daughter if the school or place of care of the child has been closed, or the child care provider is unavailable.
 6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

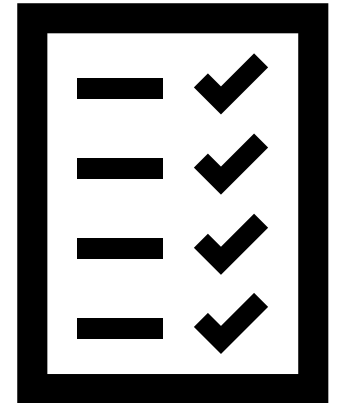


Emergency Paid Sick Leave

- If qualifying reasons 1, 2 or 3 exist, the employee is compensated at the higher rate of: their regular rate of pay, the federal minimum wage or their local minimum wage. These rates will be capped at \$511 per day or \$5,110 in the aggregate.
- If qualifying reasons 4, 5 or 6 exist, the employee is compensated at 2/3 of their regular rate of pay. These rates will be capped at \$200 per day or \$2,000 in the aggregate.

The employer will receive a tax credit which will offset 100% of employer costs for providing mandated paid sick leave. The credit will also offset uncapped, the employer contribution for health insurance premiums for the employee for the period of leave. The employer must contribute to the health insurance premiums in order to qualify for this tax credit.

Employer may not require an employee to use other paid leave before using this sick leave.



Tax Credits

- Employers will receive 100% reimbursement for paid leave.
- Health insurance costs are also included in the credit.
- Employers face no payroll tax liability.
- Sick-leave and family-leave payments mandated by the Act are exempt from the 6.2% Social Security tax component of the employer's federal payroll tax that normally applies to wages. Employers must pay the 1.45% Medicare tax component of the federal payroll tax, but they can claim a credit for that outlay.
- Self-employed individuals receive an equivalent credit

Emergency Unemployment Insurance Stabilization and Access Act

- The Unemployment Insurance benefit is for job losses (or, in some cases, reduced hours) related to COVID-19. It is not paid leave.
- Employers will be required to notify laid-off workers about potential eligibility. The Department of Labor is preparing a notice with model language.
- FFCRA requires the Secretary of Labor to provide technical assistance to states that want to set up work-sharing programs, which would allow employers to reduce hours instead of laying employees off. Employees could then receive partial UI benefits to offset reduced lost wages.

Tax Credits for Self Employed

- If you are a self-employed individual who is affected by the coronavirus emergency, the Act allows you to claim a refundable credit against your federal income-tax bill, including the self-employment tax hit. If the credit exceeds your bill, the government will issue you a payment for the excess.
- The credit equals: 1) 100% of the self-employed person's sick-leave equivalent amount plus 2) 67% of the sick-leave equivalent amount for taking care of a sick family member or taking care of your child following the closing of the child's school.
- The sick-leave equivalent amount equals the lesser of: 1) your average daily self-employment (SE) income or 2) \$511 per day for up to 10 days (up to \$5,110 in total) to care for yourself due to the coronavirus or \$200 per day for up to 10 days (up to \$2,000 in total) to care for a sick family member or your child following the closing of the child's school due to the coronavirus.
- In addition, you could claim a coronavirus emergency family-leave credit for up to 50 days. The credit amount would equal the number of qualified family-leave days multiplied by the lesser of 1) \$200 or 2) your average daily SE income. The maximum total family-leave credit would be \$10,000 (50 days times \$200 per day).
- These credits for self-employed individuals are only allowed for days during the period beginning on a date specified by the Secretary of the Treasury and ending on Dec. 31, 2020. The beginning date will be within 15 days of the March 18 date the Act became law.
- Warning: To properly claim the credits, self-employed individuals must maintain whatever documentation the IRS requires in future guidance. Your tax professional can help with that.



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