



COVID-19 Benefits Compliance Updates & FAQ

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Please note that the following is intended to be used for general guidance purposes only — it is not intended to constitute legal advice, nor is it a dispositive position on coverage. Each claim is subject to review by the applicable insurer and coverage is dependent upon the terms and conditions of your specific insurance policy.

COVID-19 Benefits Compliance Updates & FAQs

AGENDA

1. COVID-19: Layoffs and Furloughs
2. Families First Coronavirus Response Act
3. HIPAA and Privacy Considerations
4. Other Considerations
5. Questions (Q/A Session)

COVID-19: Layoffs and Furloughs



Layoffs and furloughs: Issues to Consider

Furlough vs. Layoff

- What's the difference?
- Are there any federal or state mandates that say employers must do one or the other?
- What are the formalities for each one?

Layoffs: Issues to Consider

Applicable Laws/Regulations:

- **Plan documents**
- **COBRA**
- **ACA employer mandate**

- When is COBRA offered?
- What are employer obligations upon rehire (and does it matter how long the termination lasts)?
- If an employee is terminated and rehired, can we impose a waiting period?
- May an employer pay for COBRA for its employees who are terminated due to economic downturn related to COVID-19?

Furloughs: Issues to Consider

Applicable laws/regulations:

- ERISA (definition of plan eligibility)
- Cafeteria Plan (election changes; employee contributions)
- ACA employer mandate
- Premium payments during furlough
- COBRA subsidies and strategies
- Carrier considerations/restrictions

- Do hours associated with paid leave count as hours of service under the ACA?
- May an employer extend benefits to an employee on furlough?
- May an employee on furlough change their cafeteria plan elections?
- How would an employee on furlough pay for benefits?
- If a FT employee moves to PT, are they still eligible for benefits?
- How does furlough impact unemployment benefits?

Families First Coronavirus Response Act (FFCRA)



Families First Coronavirus Response Act (FFCRA)

Enacted March 18, 2020

Emergency Paid Sick Leave Act

Emergency FMLA Expansion Act

Tax Credits to Assist Employers

COVID-19 Health Insurance
Coverage

- When is it effective?
- Is it permanent or temporary?
- Will there be more regulations/guidance before it is effective?

Emergency Paid Sick Leave Act (EPSLA)



Emergency Paid Sick Leave Act (effective by April 2, 2020)

EPSLA applies to:

Employers with fewer than 500 employees

Potential exemption for employers with fewer than 50 employees

- How is employer size determined?
- Are employees in a controlled group counted?

Emergency Paid Sick Leave Act (effective by April 2, 2020)

EPSLA applies to employees who are:

- Diagnosed with COVID-19, self-isolating or obtaining a diagnosis/care for COVID-19 symptoms
- Under quarantine to comply with an official order or recommendation because of COVID-19 exposure or symptoms
- Providing care to a COVID-19-diagnosed individual or an individual seeking a diagnosis or care for symptoms of COVID-19
- Caring for an individual affected by a school or other care facility closing
- Experiencing similar conditions specified by HHS (in consultation with the DOL and Treasury)

- Does it matter how long the employee has worked for the employer?
- Does it apply to employees who were on furlough prior to the Act's effective date?

Emergency Paid Sick Leave Act (effective by April 2, 2020)

- **FT employees may get up to 80 hours (2 weeks) of paid sick time**
- **PT employees get proportionally less time, based on the average number of hours the employee works over a two-week period.**

- Can an employee carry this sick time over into the next year?
- Is the employee entitled to payment of unused sick time upon separation from employment?

Emergency Paid Sick Leave Act (effective by April 2, 2020)

Employers must pay:

- **For employees who are sick: the higher of an employee's regular rate of pay or the applicable minimum wage, capped at \$511 per day and \$5,110 in the aggregate.**
- **For sick leave to care for another individual: the rate of pay is reduced to two-thirds of the employee's regular rate of pay, capped at \$200 per day and \$2,000 in the aggregate.**

- Does this impact an employee's rights and benefits under other leave provisions (i.e., state or local law, a collective bargaining agreement or an existing employer leave policy)?
- May an employer require an employee to use other paid leave provided by the employer before using the emergency paid sick leave?
- Does this impact an employer's STD plan's waiting periods or STD benefits via an offset?

Emergency FMLA Expansion



Emergency FMLA Expansion (effective by April 2, 2020)

Applies to:

- **Employers with fewer than 500 employees**
- **Potential exclusion for employers with fewer than 50 employees**
- **Private and government employers**

- How is employer size determined?
- Are employees in a controlled group counted?

Emergency FMLA Expansion (effective by April 2, 2020)

Employee Eligibility:

- **Employees who are unable to work OR telework because they must care for son/daughter under 18 whose school or child care is unavailable due to COVID-19**
- **Employees have been employed for at least 30 calendar days (rather than 12-month period)**

- Isn't 30 days less than the normal 12 months under FMLA?
- Are health care providers and emergency responders excluded?

Emergency FMLA Expansion (effective by April 2, 2020)

Requirements for Paid Leave:

- First 10 days are unpaid under this provision
- Remainder is paid based on amount that is not less than 2/3rds of an employee's regular rate of pay and the number of hours the employee would normally be scheduled to work
- Paid leave, per employee, is capped at \$200 per day and at \$10,000 in the aggregate

- Can an employee substitute accrued vacation, personal or sick leave during the first 10 days?
- How do you determine pay for variable hour employees?
- May an employer make changes to their current leave policies in light of this additional benefit?
- Does this impact an employer's STD plan's waiting periods or STD benefits via an offset?

Expanded FMLA leave (effective by April 2, 2020)

Job Restoration Requirements:

- **Employers with 25+ employees must reinstate employees after FMLA leave related to COVID-19**
- **Small employers must meet certain conditions to qualify for exclusion:**
 - employee's position no longer exists due to economic conditions
 - employer makes reasonable efforts to restore the employee to the same or an equivalent position
 - if the reasonable efforts fail, the employer make efforts to contact the employee and reinstate the employee if an equivalent position becomes available within a one-year period

Traditional FMLA leave: Employee diagnosed with COVID-19

FMLA relevant qualifying events:

- **Employee's own serious health condition**
- **Serious health condition is an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider**
- **Employee is unable to work, perform any one of the essential functions of his/her position or perform other regular daily activities**

- If an employee is afraid of contracting COVID-19, does FMLA cover time off?
- Is leave available for employee who needs to care for a family member diagnosed with COVID-19?
- Is leave available for employees who have been exposed to a person with COVID-19?
- Are STD benefits available for COVID-19 diagnosis?
- Have states changed their mandatory leave laws related to COVID-19?

Employer Tax Credits: EPSLA & Emergency FMLA Expansion



Tax Credits: Emergency Paid Sick Leave

Tax credits:

- Employers can claim a tax credit equal to 100% of “qualified sick leave wages” paid to employees.
- Credits are limited to \$200 or \$511 per day (\$2,000 and \$5,110 in the aggregate), depending on the qualifying leave event.
- Tax credit is capped at 10 days / employee
- Employers are also given additional tax credits related to section 106 of the Code (premium costs for group health plans) for workers on paid sick leave.

- Are the tax credits related to health insurance available to employers with 500 and more employees?
- Are the tax credits refundable if the employer does not owe taxes?
- Is there a salary limit related to the tax credit available?
- Do employers have to pay the costs and then seek the tax credit?
- Are tax credits available for self-employed individuals?

Tax Credits: Expanded FMLA leave

Tax credits:

- **Employers can claim a tax credit equal to 100% of “qualified family leave wages”**
 - **Credits are capped at \$200 / day (and aggregate of 10,000) per employee**

- Are the tax credits refundable if the employer does not owe taxes?
- Is there a salary limit related to the tax credit available?
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FFCRA: Health Insurance Coverage Mandates for COVID-19 Testing



FFCRA: COVID-19 Testing

COVID-19 Testing:

- **Group health plans and issuers of group or individual plans are required to cover COVID-19 diagnostic testing, without cost sharing**
- **Coverage includes the cost of a provider, telehealth, urgent care center or emergency room visit in order to receive testing**
- **IRS Notice 2020-15 permits an HDHP to cover testing and treatment related to COVID-19 prior to the satisfaction of the applicable minimum deductible without affecting the HDHP's status**
- **As a result, the individuals will not fail to be HSA eligible merely because the plan covered health benefits for testing and treatment of COVID-19**

- Is there mandated coverage for related office visits?
- Does this apply to governmental or church plans?
- What if treatment is provided through telemedicine – does this impact HSAs?
- Can self-insured plans modify their coverage terms to expand coverage for treatment (i.e., lower cost sharing amounts)?
- May a plan utilize prior authorization or other medical management requirements?
- Is the doctor precluded from making medical necessity determinations?
- Is this coverage mandate ongoing?
- Does this mandate include coverage for the cost of treatment for COVID-19?

HIPAA and Privacy Considerations



COVID-19: HIPAA and Privacy Considerations

COVID-19 and Privacy:

- **HIPAA has strict rules on disclosing PHI**
- **ADA restricts 'medical inquiries' to only those that are employment-related or are voluntary**

- What types of disclosures are allowed under HIPAA?
- May employers ask employees whether they have COVID-19 or related symptoms?
- If an employee tests positive for COVID-19 or is quarantined, what information can be shared with other employees?

Other Considerations



COVID-19: HDHP/HSA Considerations

COVID-19 Testing:

- **Group health plans and issuers of group or individual plans are required to cover COVID-19 diagnostic testing, without cost sharing**
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- Is there mandated coverage for related office visits?
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 - Can self-insured plans modify their coverage terms to expand coverage for treatment (i.e., lower cost sharing amounts)?
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Telehealth Considerations

Telehealth Coverage

- **Depends on coverage through carrier or through telehealth add-on coverage (usually paid by employer)**
- **Usually provides 'medical care'**
- **Problematic for HDHPs, since it could impact HSA eligibility**

- Is telehealth covered? And with what cost-sharing?
- Does telehealth impact HSA eligibility?
- Can telehealth be provided to non-eligible employees or those who waived coverage?

Dependent Care FSA Considerations

Dependent care FSAs (DCAPs):

- **Must have a qualifying event to change dependent care FSA elections mid-year**
- **Dependent care FSA qualifying events are broader than normal section 125 qualifying events.**

- What COVID-19 situations would allow for a dependent care FSA election change to reduce or cancel coverage?
- What about if/when COVID-19 situation resolves—can FSA election be added or increased?

Q/A Session: Questions Please!



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<https://www.nfp.com/about-us/news-perspectives/latest-insights?pagename=latest-insights>



Tomorrow's Webinar: COVID-19 HR Solutions Updates & FAQs

https://nfp.zoom.us/webinar/register/WN_v7PxVzb3QgeVzUolZw1Jiw

