

Top 10 Employee Benefits Issues

Questions and Answers for Employers Dealing with the COVID-19 Coronavirus

1 Are any changes required to your health benefit

What You Should Know: The federal Families First Coronavirus Response Act (H.R. 6201), which was signed into law March 18, 2020, requires group health plans and individual and group health insurers to cover COVID-19 testing without applying any cost-sharing or prior authorization or other medical management requirements. This requirement only applies during the emergency period set by federal law.

2 Have you reviewed what your sick leave and short-term disability policies cover?

What You Should Know: While most policies should cover an individual diagnosed with COVID-19, they often will not be available for individuals who are quarantined, even if under the mandate of a federal, state, or local law. Some disability policies also contain exclusions for conditions acquired during business-related travel. Employers may want to amend short-term disability policies to expand availability related to COVID-19, by taking measures such as including quarantine as a disability or allowing individuals to self-certify a condition during a public emergency declared at the state or federal level. Alternatively, employers may want to implement standalone temporary COVID-19 policies that supplement existing paid leave and disability programs.

3 Do your leave policies comply with new federal mandates?

What You Should Know: Under the Families First Coronavirus Response Act, employers with fewer than 500 employees are required to provide up to 12 weeks of paid family leave to employees who are unable to work because they need to care for children whose schools or daycare facilities have closed due to COVID-19. Small employers are also required to provide up to 10 days of paid sick leave to employees who cannot work because of COVID-19. Employees must be paid two-thirds of their regular rate for paid family leave and their regular rate for paid sick leave. The federal leave programs must be offered before and in addition to an employer's existing policies. Tax credits are available to employers making these payments.

4

Are you taking advantage of cost-sharing waivers and telemedicine benefits?

What You Should Know: The Internal Revenue Service (IRS) announced that high-deductible health plans may cover testing and treatment of COVID-19 on a first-dollar basis (without requiring any cost-sharing such as copayments or out-of-pocket spending up to the deductible). The IRS confirmed that plan amendments to fully cover COVID-19 testing and treatment will not disqualify health savings account eligibility. Note that this IRS Notice covers treatment, which is not required to be provided without cost-sharing or medical management under the federal Families First Coronavirus Response Act.

Some insurers will waive all telemedicine fees, including for visits unrelated to COVID-19. This is partly due to the Centers for Disease Control and Prevention encouraging the use of telemedicine services to help prevent the spread of the virus, and partly due to administrative difficulties in determining which telemedicine services relate to COVID-19. While state insurance laws do not apply to self-funded health plans, employers may want to discuss the possibility of temporary fee waivers with their telemedicine administrators as well as cost-sharing waivers for the testing and treatment of COVID-19.

5

Are you reducing employees' working hours?

What You Should Know: Many employers have needed to reduce working hours in response to the COVID-19 emergency. There are several benefits ramifications that employers should be aware of. Most employer health plans limit eligibility to employees who work full-time, as determined by Affordable Care Act (ACA) rules. If employees lose health coverage because of a reduction in working hours, their right to Consolidated Omnibus Budget Reconciliation Act (COBRA) continuation coverage will be triggered. This may not happen for a while, depending on the measurement method that the employer uses. Employees could lose eligibility for other hours- or status-based benefits as well. Employers may want to consider amending benefit plan eligibility to avoid this result. Even if employees maintain eligibility for benefits despite a reduction in working hours, employers could be affected by ACA rules regarding affordability and applicable large employer status. Employers may also need to consider furloughs, paid or unpaid, which have similar benefit plan considerations.

6 Does your 401(k) plan offer hardship distributions or loans that may apply to COVID-19?

What You Should Know: Many 401(k) plans offer in-service distributions to participants who suffer financial hardships. One type of hardship withdrawal allowed by the IRS is for medical expenses for the plan participant or their primary beneficiary under the 401(k) plan. Because the President declared COVID-19 a national disaster, some participants may also qualify for disaster-related distributions.

401(k) plans generally do not limit the circumstances under which participants may take plan loans. For 401(k) plans that allow plan loans, however, some plans place limits on the number of loans that can be taken out of the plan at any given time or on the amount of a participant's loan. Under IRS regulations, employees who are on unpaid leaves of absence under one year long may forego loan repayments if certain conditions are met. Employers that need to reduce their workforce may also want to consider amending plans to allow loan repayments to be made through withholding on severance payments. Employers that do not permit 401(k) plan loans may want to consider amending their plans to add them.

7 Are your severance and executive compensation agreements affected by furloughs?

What You Should Know: Employers should carefully review the terms in their executive compensation agreements. While furloughs will generally not be considered a separation from service, some agreements contain a payment trigger for "good reason," such as a material reduction in compensation or benefits, a change in work location, or a material diminution in work responsibilities. Severance payments triggered by a furlough could negatively affect an employer's cash-flow and could also trigger state unemployment benefits. However, employers need to be careful to avoid any impermissible accelerations of deferred compensation that may occur by amending executive compensation agreements.

8 Do you have employees teleworking in different states from their normal worksite(s)?

What You Should Know: Employees who work remotely must report income to the state in which they are performing services. This will be the state of residence for employees teleworking from home. Employers should coordinate with their payroll tax providers to correctly report the income of their teleworkers.

9

Are you terminating any employer or employee contributions on account of COVID-19?

What You Should Know: Employers should determine whether any changes can be made to contributions towards benefit plans. School and daycare closures may affect the eligibility of dependents for dependent care flexible spending accounts (FSAs), allowing employees to change their contributions mid-year. Employees who qualify for leave under the Family and Medical Leave Act must be given the option to revoke or continue health plan and FSA coverage. Employers may also be able to discontinue 401(k) discretionary nonelective or matching contributions. Safe harbor plans will require a supplemental notice 30 days in advance of the suspension of contributions. Employers may only discontinue mandatory matching contributions by amending the plan document.

10

Have you considered benefit plan options for aiding employees during this emergency?

What You Should Know: Many employers have had to reduce employee hours and workforces and are interested in affordable measures to boost employee morale. Employers can review options including supplemental unemployment benefit plans, emergency sick leave policies, COBRA subsidies, and employee leave-sharing programs. If employees have lost health plan coverage due to termination or a reduction in hours, employers may choose to partially or fully subsidize their COBRA premiums. Employers with self-funded health plans need to be careful to not subsidize premiums in a way that favors highly compensated employees. The IRS has created disaster leave-sharing and catastrophic leave-sharing programs, in which employees pool and share leave time. While COVID-19 conditions may qualify for a catastrophic leave-sharing program, they are more likely to qualify for a disaster leave-sharing program. The IRS also allows employers to make certain qualified tax free payments directly to employees affected by disasters declared by the President under the Stafford Act, such as the COVID-19 pandemic.