



AMERICAN BENEFITS

COUNCIL

Health & Paid Leave COVID-19 Coronavirus Compliance Webinar: Ask the Legal Experts

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Today's Speakers

Moderators:

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Health Coverage Questions

Screening and Treatment of COVID-19

- **Does the Families First Act require group health plans and issuers to cover COVID-19 screening, without cost sharing? Does the Act also address the costs of the related office visits?**
- **The Families First Act provides that plans cannot apply “prior authorization or other medical management requirements” to COVID-19 screening. What does this mean? Does this preclude doctor recommendations or medical necessity determinations?**

Health Coverage Questions

Screening and Treatment of COVID-19

- Does the Families First Act require group health plans and issuers to cover the cost of treatment for COVID-19?
- The provision in the Families First Act which requires group health plans and issuers to cover COVID-19 screening without cost sharing applies to “items and services furnished during any portion of the emergency period”, beginning on or after the date of the enactment of the Act. What event begins the emergency period, and what ends the emergency period?

Health Coverage Questions

Screening and Treatment of COVID-19

- ◉ **Can employers provide COVID-19 screening and treatment to employees who aren't benefits eligible (i.e., either those who opted out of coverage or those who aren't eligible for coverage)?**
- ◉ **Are there ways to provide telehealth services to non-benefit eligible employees (and have you heard of providers turning down non-eligible groups)?**
- ◉ **What are employers doing for ineligible employees?**

Health Coverage Questions

Screening and Treatment of COVID-19

- **Can health plans provide telemedicine coverage without cost-sharing, even if the plan is a high deductible health plan?**
- **What if the telehealth provider doesn't have a mechanism to differentiate COVID-19 treatment from non-COVID-19 treatment or just wants to offer telemedicine to all employees without cost-share generally?**
- **Is IRS guidance or legislation expected on this topic?**

Health Coverage Questions

Screening and Treatment of COVID-19

- **Does IRS Notice 2020-15 mean that HDHPs have to lower or eliminate the deductible for COVID-19 tests and treatment, or is it optional and plans keep their deductible as-is? Can there still be a deductible, just not the prescribed minimum deductible, but something lower like a \$500/\$1000 deductible?**
- **What issues should employers be thinking about from a privacy perspective as it relates to the current situation?**

Health Coverage Questions

Furloughs, Layoffs, Terminations

- ◉ **Some employers may be considering the use of furloughs, layoffs, or perhaps even termination of employees for financial reasons or otherwise**
 - For those employers who want to keep making available health coverage to their employees during furlough, or even after layoff or termination, what should employers be thinking about?
 - For those employers who may need to think about curtailing benefits for affected employees, what issues should these employers be considering?

Health Coverage Questions

Furloughs, Layoffs, Terminations

- ◉ **Is there legislative consideration of federal COBRA subsidies or other strategies intended to keep employers “in the game” in providing health care to their current employees, as well as furloughed or laid off employees, similar to those adopted in response to the 2008 financial crisis?**

Reporting Deadline Questions

- ◉ **Is IRS considering extending the March 31 electronic filing deadline for employers and issuers of Forms 1094-B/1095-B and 1094-C/1095-C?**
- ◉ **Is New Jersey considering extending the March 31 filing deadline by employers and issuers related to the state's individual mandate?**

Paid Leave Questions

- ◉ I understand the Families First Act would provide for two new types of paid leave at the federal level. Can you describe these two types of leave?
- ◉ For the paid leave provisions under the Families First Act, which apply to employers with under 500 employees, how is employer size determined? Is it measured as of a snapshot date? Are all the employees in a controlled group counted?

Paid Leave Questions

- ◉ **The Act would provide for related tax credits. Can you describe what these tax credits are and how they would work?**
- ◉ **For employers subject to these leave requirements, would state and local leave mandates still apply?**

Paid Leave Questions

- ◉ **As mentioned, these leave provisions only apply to employers with fewer than 500 employees, have you heard about efforts in Congress or at the state level to apply leave mandates to larger employers?**
- ◉ **With respect to the employer mandate, do hours associated with paid leave provided as required under the Families First Act count as hours of service for purposes of the employer mandate?**

Paid Leave Questions

- **Outside the US, in particular in EMEA and APAC regions are their legal or compliance ramifications that need to be taken into consideration relating to providing extended or additional time off to employees relating to the COVID-10 pandemic?**
- **Some employers are considering allowing employees to cash out accrued PTO immediately as a source of funds to address COVID-19 related financial needs (e.g., partner/spouse layoffs and other financial strains resulting from the current situation). Are you aware of any suggestion from the IRS that such an approach would be exempt from the typical constructive receipt issues that are raised by elective immediate PTO cash out programs?**

Labor/Employment/Immigration Questions

- ◉ **Can an employer take employees' temperatures each day upon arrival at work?**
- ◉ **Are there any particular issues under the ADA that employers should be thinking about related to COVID-19?**

Labor/Employment/Immigration Questions

- ◉ **What are the best resources for employers and employees facing furloughs and layoffs?**
- ◉ **What issues should employers keep in mind when considering furloughs and layoffs?**

Labor/Employment/Immigration Questions

- ◉ **How should employers administer I-9 requirements, particularly as it relates to the in-person mandate? Will there be relief to facilitate e-signatures, for instance, in the event new employees can't make it in or changing circumstances make it infeasible?**

Disaster Relief/Emergency Relief Questions

- **Would COVID-19 qualify as a “Major Disaster” for which the IRS has approved tax-favored treatment for a “leave donation plan”?**
- **Is guidance anticipated on whether employers can implement PTO donation programs in response to COVID-19 that follow the guidelines in IRS Notice 2006-59 for “major disaster” leaving sharing programs, even though COVID-19 has not yet been declared a “major disaster” under Section 401 of the Stafford Act?**