

Managing Coronavirus Impacts on Employee Benefits

Families First Coronavirus Response Act – Effective April 2, 2020

- **Note: This final version signed into law is not the same as the version you may have heard about earlier. Several changes were made to the bill in the past week during negotiations between the U.S. House of Representatives and Senate.**

I. New Sick Paid Sick Leave Benefit for specific Coronavirus-related reasons, including:

- o Employees subject to quarantine/isolation order from public health official;
- o Employees advised by health care provider to self-quarantine;
- o Employees experiencing COVID-19 symptoms and seeking a diagnosis;
- o Employees caring for an individual subject to a quarantine/isolation order or recommendation; and
- o Employees who need time off to care for their child(ren) due to a school or daycare closure.

- 80 hours of paid sick leave must be offered (to FT employees) and must be paid at the employee's regular hourly rate. Sick leave must also be provided to PT employees for a number of hours equal to the number of hours the employee works, on average, over a 2-week period.
- Paid sick leave is available immediately for all employees of applicable employers and must be usable before the employee is required to take other paid leave provided by the employer.
- Employer cannot retaliate against employees for taking leave and must post a notice in a form to be described by the DOL (TBD).

II. New Partially-Paid FMLA for Limited Purposes (different from original House proposal):

- The Act provides for job-protected FMLA leave where the employee is unable to work (or telework) due to a need for leave to care for a child where the child's school or daycare/childcare is unavailable due to a Coronavirus-related closure.
- FMLA leave for this purpose lasts for 12 weeks, and the leave is paid after the first 10 days (employees can use other paid leave during those first 10 days). Employees are eligible for this benefit if they have worked for the employer at least 30 days prior to taking leave.
- Paid leave is paid at an amount no less than 2/3 of the employee's regular rate of pay not to exceed \$200 per day or \$10,000 total.
- Exceptions are available for employers of fewer than 50 employees where offering this leave would jeopardize the viability of the business.
- Employees on FMLA leave may still be subject to layoffs – but termination should not be retaliatory for taking FMLA leave.
- These changes only apply to FMLA for limited purpose described above – an employee diagnosed with COVID-19 would not be eligible for FMLA under this new rule (but might be eligible for FMLA under existing law if the employer is already subject to FMLA).

Employee Furloughs/Reduction in Hours

- I. Eligibility: Review plan documents to determine if a reduction in hours will affect eligibility under the plan. Make plan document/employment policy changes as necessary (in consultation with carriers) to accomplish employer goals for continuing coverage/preserving eligibility; otherwise, COBRA may need to be offered.
- II. Employee Contributions: Reduction in hours may make it difficult for employees to afford coverage. Employers may consider modifying cost-sharing or adjusting contribution amounts for employees affected by a reduction in hours.

Employee Layoffs (Temporary or Extended)

- I. Layoffs vs. Furloughs: Effect on benefit eligibility depends on the details – either instance may result in a loss of eligibility even if there are different impacts on employment.
- II. Eligibility: Unless employers have a policy stating otherwise, a layoff may mean employees can no longer be covered as active employees under a group health plan. If eligibility ends, COBRA may need to be offered. Employers can modify or waive eligibility provisions if they wish to extend coverage to laid-off employees, but they should only do so in consultation with the carrier (particularly the stop-loss carrier for self-funded medical plans).

Other Employment and Benefit Issues

- I. FMLA may also apply for employees who are sickened and unable to work due to COVID-19 – this should be treated in the same way as other FMLA requests for a “serious health condition.” Not all instances of employee infections would necessarily constitute “serious health conditions.”
- II. Coronavirus testing should be covered under most traditional major medical plans. Confirm with your insurance carrier/third-party administrator as to how the plan covers COVID-19-related testing and treatment (different carriers have issued different guidance on this issue).
- III. Per recently issued IRS guidance, health benefits, medical services, and other items related to the testing for or treatment of COVID-19 may be provided by a high-deductible health plan prior to the deductible being satisfied without jeopardizing a participant's HSA eligibility. The terms of the plan will control to what degree these items are covered, but this does permit plan sponsors to modify cost-sharing to encourage testing and reduce employee anxiety about treatment costs.