Always Designing for People™

ADP Coronavirus (COVID-19) FAQ

Workplace Policies & Legislative Changes

UPDATED: March 30, 2020

OVERVIEW

The ADP Coronavirus (COVID-19) FAQ was designed to help you navigate the challenges you and your workforce are facing. This robust resource includes general information about COVID-19, important workplace policies, employee health and safety measures, legislative changes and more.

As a critical partner that millions of workers rely on, we understand the importance of our operation to our clients' businesses and their employees' livelihoods. We are taking unprecedented measures to ensure our associates are safe while our clients and their employees have the essential services and guidance, they need to get through these trying times.

TABLE OF CONTENTS

- Overview
- Items to Note
- Additional Resources
- General Information
- Employee Tests Positive
- Workplace Safety
- Employee Travel
- Employee Health / Privacy
- Visitors
- Wage & Hours
- Payroll
- Remote Work
- Form I-9
- Workers' Compensation
- Employee Leave
- Warn Act / Mass Layoffs
- Furloughs
- Unemployment Insurance
- The Families First Coronavirus Response Act (FFCRA)
- Emergency Family and Medical Leave Expansion and Emergency Paid Sick Leave Provisions
  - Emergency Family and Medical Leave Expansion Act (Emergency FMLA)
  - Emergency Paid Sick Leave Act
  - Health Provisions
  - Paid Sick Leave Tax Credits
  - Paid Family Leave Tax Credits
  - FFCRA Employee Rights Notice
- Small Business
- OSHA Record Keeping
- Benefits
- The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act")

Always Designing for People™

ITEMS TO NOTE

- The information in this document is subject to change based on developments regarding COVID-19 regulations and guidelines. **As of March 30, 2020**, this material is current and accurate.

- **The Families First Coronavirus Response Act (FFCRA; "The Act") does not take effect until April 1st, 2020**. It is not retroactive. See FFCRA section below for additional guidance.

- This is not an exhaustive list of all state / local legislation recently enacted or guidance issued due to COVID-19.

ADDITIONAL RESOURCES

- The **EEOC** has released helpful guidance addressing the intersection of the Coronavirus in the workplace with the Americans with Disabilities Act ("ADA"). Please click here for the EEOC's guidance**.**

- The **DOL** has released FFCRA: Questions and Answers. Please click here for Q&A. In addition, the DOL has released helpful guidance for employers on FFCRA paid leave. Please click here for Employer Paid Leave guidance.

- **FOR EMPLOYEES IN CALIFORNIA,** please click here for FAQs from California Labor Commissioner's Office and click here for guidance from California's employee development department.

- **FOR EMPLOYEES IN COLORADO,** the Colorado Department of Labor and Employment has published an emergency rule that temporarily requires employers in certain industries to provide paid sick leave to employees with flu-like symptoms who are being tested for coronavirus (COVID-19). Please click here for summary.

- **FOR EMPLOYEES IN NEW YORK,** Governor Andrew Cuomo signed into law legislation (S08091) that provides paid leave benefits and job protection to "each employee who is subject to a mandatory or precautionary order of quarantine or isolation issued by the state of New York, the department of health, local board of health, or any governmental entity duly authorized to issue such order due to COVID-19." Please click here for additional information and further guidance from the state.

Always Designing for People™

GENERAL INFORMATION

Q: Where can I find information about COVID-19?

A: The Centers for Disease Control and Prevention (CDC), the U.S. Occupational Safety and Health Administration and the World Health Organization have created dedicated webpages with information on COVID-19.

In addition, state and local health officials are developing guidelines and resources on the illness. Check your state and local Department of Health for additional information.

EMPLOYEE TESTS POSITIVE – WHAT NOW?

Q: What should I do if an employee informs me they have COVID-19? Should I tell co-workers?

A: If an employee is confirmed to have COVID-19, employers should inform other employees of their possible exposure to COVID-19 in the workplace but maintain confidentiality (that is, don't reveal who has the illness). Employers should treat all information about an employee's illness as a confidential medical record and keep it separate from the employee's personnel file.

As a precautionary measure, you may want to consider asking all employees who worked closely with that employee to self-quarantine for a 14-day period of time to better ensure that the infection does not spread. In addition, as a best practice, you may want to consider asking a cleaning company to complete a deep cleaning of your workspace. If you work in a shared office building or area, then you may want to inform management so they can take any necessary precautions.

Employers should also immediately contact local health officials for further guidance. However, there is no obligation on the part of the employer to report it to the CDC. The healthcare provider that diagnosed the individual holds that responsibility.

WORKPLACE SAFETY

Q: What is the risk of contracting COVID-19 in the workplace?

A: According to health officials, the risk of contracting COVID-19 in most jobs generally remains low in the United States. The CDC regularly conducts risk assessments, and as of March 11, 2020:

- For most of the American public, the immediate health risk is considered low.
- People in communities where ongoing community spread has been reported are at elevated risk of exposure.
- Healthcare workers caring for patients with COVID-19 and close contacts of persons with COVID-19 are at elevated risk of exposure.
- Travelers returning from affected international locations (China, Iran, Italy, Japan, and South Korea), where community spread is occurring also are at elevated risk of exposure.
- Travelers on cruise ships are at an elevated risk of exposure.

Q: What can I do to help prevent the spread of COVID-19 in my workplace?

A: Health officials recommend reminding employees of the importance of:

- Washing hands often with soap and warm water for at least 20 seconds.
- Avoiding touching your eyes, nose, and mouth.
- Cleaning things that are frequently touched (like doorknobs and countertops) with household cleaning spray or wipes.
- Covering coughs and sneezes with a tissue or the inside of the elbow.
- Staying home when feeling sick. You can help encourage employees to stay home when they're sick by reminding them of your paid (or unpaid) leave program. Consider reviewing and revising your sick policy and procedures for flexibility. At a minimum, ensure that your policy is consistent with current public health recommendations and existing federal, state, and local laws. Be clear on any notice requirements for absences and enforce rules consistently.

Note: Depending on the circumstances, employers may be required to provide job-protected time off to employees under federal, state, and/or local disability and/or leave laws.

Always Designing for People™

Employers can help employees practice healthy habits by providing tissues, no-touch trash cans, hand soap and sanitizer, and disposable towels. Routinely clean all frequently touched surfaces, such as workstations, countertops, and doorknobs.

Q: All of my employees touch the timeclock, how can I clean it?

A: As a rule of thumb, timeclocks can be cleaned the same way any sensitive optical equipment like a camera would be.

EMPLOYEE TRAVEL

Q: May employers ask employees about travel by cruise ship and/or geographic areas where they have traveled or intend to travel?

A: Yes, absent a claim that an employee has a recognized privacy interest in their travel activities. Employers should take steps to reduce any reasonable expectation of privacy that employees might have in those activities.

Q: May employers bar asymptomatic employees from entering the workplace if they have traveled to designated WHO or CDC affected regions (including cruise ships and/or any other modes of transportation that WHO or CDC deems affected)?

A: Yes, as long as employers act consistently based on travel activities and do not say or do things to suggest they believe such employees actually have a physical or mental impairment, such steps should not violate the Americans with Disabilities Act or other federal, state or local EEO laws. Employers must remember that states and localities may provide greater protections than federal law.

Q: May employers bar asymptomatic employees from entering the workplace if a household member has traveled to designated WHO or CDC affected regions (including cruise ships and/or any other modes of transportation that WHO or CDC deems affected)?

A: Yes, given the close contact ordinarily experienced by household members, employers usually would be justified in barring employees from entering the workplace in these circumstances.

Q: May employers require asymptomatic employees who have traveled to affected regions (including cruise ships and/or any other modes of transportation that WHO or CDC deems affected) or had close contact with such individuals remain at home for the presumed 14-day incubation period?

A: Yes.

Q: Can I ask employees to notify me if they've come in contact with someone who has COVID-19?

A: Employers may ask employees to notify them if they have been in contact with someone who has COVID-19. If the an employee reports contact with someone who has COVID-19, direct the employee to the CDC's guidance for how to conduct a risk assessment of their potential exposure to assess whether they are low, medium or high-risk.

EMPLOYEE HEALTH / PRIVACY

Q: May employers require employees who have been asked to remain home due to COVID-19 infection concerns to provide notes from healthcare providers confirming they are capable of returning to work? [Updated 03/25/2020]

A: Yes, according to the EEOC. Such inquiries are permitted under the ADA either because they would not be disability-related or, if the pandemic influenza were truly severe, they would be justified under the ADA standards for disability-related inquiries of employees. As a practical matter, however, doctors and other health care professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation. Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have the pandemic virus.

Q: May employers require employees confirmed for COVID-19 infection to test negative for COVID-19 infection before they return to work?

A: Yes, such inquiries should satisfy ADA standards for disability-related inquiries or medical examinations, however, as a practical matter, testing capacity may be limited and employers may need to consider other reliable methods to certify that an individual does not have the pandemic virus. Employers must also remember that states and localities may provide greater protections than federal law.

Q: May employers ask employees if they have symptoms of COVID-19 infection? [Updated 03/25/2020]

A: Yes, the EEOC advises that employers may ask employees who report feeling ill at work, or who call in sick, questions about their symptoms to determine if they have or may have COVID-

19. Currently these symptoms include, for example, fever, chills, cough, shortness of breath, or sore throat.

Q: May employers send employees home if they develop symptoms of COVID-19 infection? [Updated 03/25/2020]

A: Yes, according to the EEOC. The EEOC has recognized that the CDC says employees who become ill with symptoms of influenza-like illness at work during a pandemic should leave the workplace. Advising such workers to go home is not a disability-related action if the illness is akin to seasonal influenza or the 2009 spring/summer H1N1 virus. Additionally, the action would be permitted under the ADA if the illness were serious enough to pose a direct threat. **Applying this principle to current CDC guidance on COVID-19, the EEOC says that this means an employer can send home an employee with COVID-19 or symptoms associated with it**.

Q: Can I take an employee's temperature? [Updated 03/26/2020]

A: The EEOC has advised that, generally, measuring an employee's body temperature is a medical examination. Because the CDC and state and local health authorities have acknowledged community spread of COVID-19 and issued precautions, the EEOC has now advised that employers may measure employees' body temperature. However, the EEOC says that employers should be aware that some people with influenza, including the **COVID-19**, do not have a fever.

Q: Can I require employees to get tested for COVID-19?

A: Requiring an employee to be COVID-19 tested would also be considered a medical examination and subject to the rules of the federal Americans with Disabilities Act (ADA) and similar state laws. Under the federal ADA, medical examinations of current employees are prohibited unless they're job-related and a business necessity. This means that the employer must have a reasonable belief based on objective evidence that:

- An employee will be unable to perform the essential functions of their job because of a medical condition; or

- The employee will pose a direct threat because of a medical condition that cannot otherwise be eliminated or reduced by reasonable accommodation. In the past, the Equal Employment Opportunity Commission has said that this exception could apply if the illness is more severe than seasonal flu or a pandemic has been declared in the United States and becomes widespread as assessed by health authorities.

Always Designing for People™

Assessments of whether an employee poses a direct threat in the workplace must be based on objective, factual information. Employers are expected to make their best efforts to obtain public health advice that is appropriate for their location, and to make reasonable assessments of their workplace conditions based on this information.

EMPLOYEE REFUSAL TO COME TO WORK

Q: Can I stop my employees from going home because they fear they will become exposed while at work?

A: Employees who refuse to work may have protections from adverse action. For example, under the Occupational Safety and Health Act, employees may have the right to refuse to work if **all** of the following conditions are met:

- Where possible, they have asked the employer to eliminate the danger, and the employer failed to do so;
- They genuinely believe that an imminent danger exists;
- A reasonable person would agree that there is a real danger of death or serious injury; and
- There isn't enough time, due to the urgency of the hazard, to get it corrected through regular enforcement channels, such as requesting an OSHA inspection.

Section 7 of the National Labor Relations Act (NLRA), which grants employees the right to act together to improve wages and working conditions, may also come into play in this situation.

If employees express apprehension about working and the risk of contracting the illness remains low, employers can try to reassure them by discussing the measures the company has taken to protect employees, referring to information from public health officials about the risks of workplace exposure, and suggesting ways they can help further reduce the possibility of exposure. You may also want to consider offering the option of working from home if possible, a flexible schedule so they can limit contact with others, and/or paid or unpaid leave.

Note: If an employee has an underlying condition that would qualify as a disability, they may be entitled to a reasonable accommodation under the ADA and/or similar state laws. Paid or unpaid leave may be considered a reasonable accommodation.

Always Designing for People™

FACE MASKS AT WORK

Q: Should employees wear a face mask to work? [Updated 3/25/2020]

A: The EEOC advises that an employer may require employees to wear personal protective equipment (PPE) during a pandemic. However, where an employee with a disability needs a related reasonable accommodation under the ADA (e.g., non-latex gloves, or gowns designed for individuals who use wheelchairs), the employer should provide these, absent undue hardship.

OSHA regulations for PPE and respiratory protection require employers to assess the hazards to which their workers may be exposed when determining whether to require PPE. In this context, consider whether your workers may encounter someone infected with COVID-19 in the course of their job duties, or whether they may come into contact with worksites or materials (such as, laboratory samples, waste) contaminated with the virus.

Keep in mind that there are key differences between respirators and the facemasks you see people often wear on the street during outbreaks. A respirator reduces exposure to airborne particles, is tight-fitting, and filters out at least 95 percent of particles in the air. Respirators, including those intended for use in healthcare settings, are certified by the CDC/NIOSH. By contrast, most facemasks do not effectively filter small particles from the air and don't prevent leakage around the edge of the mask, so they can't be relied upon to protect workers against airborne infectious agents. However, the CDC does recommend that individuals with a confirmed or suspected case of COVID-19 wear a facemask until they are isolated at home or in a hospital.

VISITORS

Q: May employers ask visitors to their business locations to disclose their travel activity, including geographic areas where they have traveled and/or mode of transportation, before authorizing their entry to their premises?

A: Yes, absent a claim that visitors have recognized privacy interests in their travel activities, businesses may ask them if they have traveled to areas of concern.

Q: Does asking visitors to disclose their travel activity, including geographic areas where they have traveled and/or mode of transportation, trigger any privacy obligations?

A: Yes, such requests may trigger notice of collection obligations under the California Consumer Privacy Act (CCPA) or similar obligations under other state privacy laws. If inquiries are made in Europe, GDPR obligations may be triggered.

Always Designing for People™

WAGE & HOURS

Q: Must employers pay employees who are denied access to the workplace? [Updated 03/25/2020]

A: Absent a contractual commitment to pay, including an applicable collective bargaining agreement, no federal law requires employers to pay non-exempt employees for time they do not actually work. Federal or state wage hour laws may require exempt employees to be paid their regular salary if they are directed not to report to work. For example, under federal law, if an exempt employee works any part of a workweek, and is then out sick for the remainder of the week (or quarantined), he should be paid for the entire week, though the employer may require him to use PTO for that paid time. Some state or local laws may impose additional pay obligations for certain occupations, especially if employers provide little or no advance notice that employees are not to report to work as scheduled.

Lastly, as discussed below, as of April 1st, the federal Families First Coronavirus Response Act (FFCRA) requires private employers with fewer than 500 employees (and most public employers) to provide up to 80 hours of paid sick leave for employees who, among other things, have been diagnosed with COVID-19, are experiencing symptoms of it, or are caring for an individual who is quarantined because of it. As a result, if an employee is denied access to the workplace for those reasons, they would be entitled to sick leave pay. The amount of pay due to the employee depends on the reason for the leave.

Q: If my business is forced to close, do I have to pay non-exempt employees?

A: Non-exempt employees (those entitled to minimum wage and overtime) are paid only for "hours worked." Therefore, if non-exempt employees miss an entire day's work because you're closed and you didn't require them to report to work, you're generally under no obligation to pay them, unless you've promised otherwise. You can give employees the option of using any accrued paid time off for the time missed.

Q: What about exempt employees? Would I have to pay them their full salary if we close?

A: Exempt employees must generally receive their full salary in any workweek in which they perform work, regardless of the number of hours worked. If your company closes for less than a full workweek due to the virus, you must generally pay an exempt employee their full salary, as long as the employee worked any part of the workweek.

Always Designing for People™

Q: What if my company is forced to close early because of the virus? Do I have to pay non-exempt employees for the time they missed that day?

A: If the company closes early, federal law doesn't require you to pay non-exempt employees for the missed time, unless you promised otherwise. However, you must pay these employees for any time they actually worked and for the time they stayed at work while you were making a decision to close. Note that some state laws require employers to pay employees for a minimum number of hours when they report to work but are sent home before the end of their scheduled shift. Check your applicable law for pay requirements when employees are required to report to work but are sent home early.

Q: What if an employee is on a quarantine and cannot telecommute? Do I have to pay them during the quarantine? [Updated 03/25/2020]

A: Employers should check applicable policies, collective bargaining agreements, and state and local paid leave laws to determine if pay is required. For example, federal or state wage and hour laws may require exempt employees to be paid their regular salary if they are directed not to report to work, unless it is in increments of a full workweek. Some state and local laws may impose additional pay obligations for certain occupations, especially if employers provide little or no advance notice that employees are not to report to work as scheduled. State and local paid leave laws may also require pay. Even in the absence of a requirement, some employers are electing to pay employees who are placed in quarantine and cannot telecommute.

Also, as of April 1st, the federal FFCRA requires provide employers with fewer than 500 employees (and most public employers) to provide up to 80 hours of paid sick leave for employees who, among other things, have been diagnosed with COVID-19, are experiencing symptoms of it, or are caring for an individual who is quarantined because of it. As a result, if an employee is quarantined and cannot telecommute, they would be entitled to sick leave pay. The amount of pay due to the employee depends on the reason for the leave.

PAYROLL

Q: How do we run payroll if everyone is remote?

A: You can submit payroll from anywhere. Simply log on to the portal from your phone or computer, or use the ADP Mobile App to submit or make modifications to your payroll. Your Payroll Advisor can help evaluate payroll options for your company and provide you with support, such as:

- Reviewing your scheduled payroll changes.
- Redirecting your payroll delivery in advance to avoid a delay.

- Helping to identify members of your team who do not have direct deposit.
- Facilitating the set-up of direct deposit, Wisely Pay Card and iReports, as/if needed.
- Help reschedule your payroll, if you need.

Payroll - If your employees do not have a full electronic payment, we offer two ways to ensure they are paid regardless of any kind of delivery delay. We can expedite this set up for direct deposit and/or the Wisely Pay Card.

Payroll Reports - Presented as PDFs, iReports allow you to quickly and easily analyze your data without printing.

Q: We have employees teleworking in different states from their normal worksite(s). Can we continue to withhold and report income based on the employee's normal worksite, or do we need to start withholding and reporting based on the new worksite (e.g., the employee's home)? [New 03/25/2020]

A: State income tax is primarily based on the state in which an employee is providing services and the employee's state of residence. State laws differ as to how long an employee can be working in a state temporarily before withholding and reporting are required. The current environment may prompt tax authorities to issue special rules, but as of now there has been no new guidance on this question. Employers should consult with their tax advisors for advice on how to correctly report the income of their teleworkers.

REMOTE WORK

Q: What responsibilities do employers have to employees while they are working from home?

A: For non-exempt employees, the employer should take steps to ensure that all work time is recorded and paid, as well as any overtime. We recommend that employers who anticipate having employees working from home for an extended period of time prepare a simple agreement for employees to sign acknowledging their understanding of the arrangement including the employee's obligation to maintain a safe workspace as well as the temporary nature of the arrangement. Telecommuting arrangements should make clear that employees are expected to maintain safe conditions at the home office and to practice the same safety habits as he/she would in his/her office on the employer's premise. This is likely not practical or necessary for employees asked to work from home for only 14 days during an incubation period. Employers should consult with their workers' compensation carrier(s) to ensure that telecommuting employees fall with the policy's coverage. However, the telecommuting policies and/or

agreements should state that the employer assumes no responsibility for injuries that occur in the employee's home office outside the agreed upon "work hours." The telecommuting policy should also state that the employer assumes no responsibility for injuries to third parties who may be present at the employee's home office. Employers should also determine what expenses they will reimburse in this situation. In some states, including California, employers are required to reimburse the employee for reasonable cost of any internet and phone service needed to perform work duties. There may also be tax implications of the employee working from home.

Q: What other steps should employers take to ensure employees work effectively from home during a pandemic?

A: Employers should ensure that the company's IT infrastructure supports the employee(s) working from home and that the employee has the equipment, whether company-provided or personal as well as internet connection to perform all required work. Employers should consider communicating to employees their general expectations including: (1) while working from home, the employee will still be expected to complete their work assignments, be available during regular business hours and communicate with their supervisor and others as needed; (2) the employee should continue to adhere to all Company policies; (3) the employer retains discretion to permit, or not permit or discontinue a telecommuting arrangement at any time; (4) employees are responsible for maintaining the confidentiality of all work-related information and follow the company's confidentiality policies. These items can be covered in the agreement mentioned above. Under these unique circumstances, employers may need to consider making their work from home arrangements more flexible than usual. For example, if employees are asked to work from home due to community spread of the virus, children are likely to home from school.

Q: What happens if schools close and employees need time off? [Updated 03/25/2020]

A: Among the states and local jurisdictions that require employers to provide paid sick leave, many cover absences related to school closures that are ordered by health officials. Check your state and local laws for details. In the absence of a specific requirement, employers should consider offering paid and/or unpaid leave to these employees.

As discussed below, as of April 1st, the FFCRA amends the FMLA to allow an employee who has been employed at least 30 days and who is unable to work (or telework) to take up to 12 weeks of leave to care for the employee's son or daughter (under 18 years of age) if the child's elementary or secondary school or place of care has been closed, or the childcare provider is unavailable, due to a public health emergency such as COVID-19. Employees taking leave shall be paid at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to $200 per day and $12,000 in the aggregate (over a 12-week period—two weeks of paid sick leave

followed by up to 10 weeks of paid expanded family and medical leave). This new FMLA leave only applies to private employers with fewer than 500 employees and most public employers.

Q: Do I have to allow employees to work from home?

A: In general, employers aren't required to allow employees to work from home. However, telecommuting can help prevent the spread of the illness by allowing employees to work without exposing themselves or others to the virus. Therefore, you should consider telecommuting as an option for jobs that can be performed remotely.

***Note:** Telecommuting may be considered a reasonable accommodation if a worker's condition qualifies as a disability under the ADA and/or similar state laws.

FORM I-9

Q: I am working from home and need to hire an employee remotely. Can I review scanned copies of I-9 Section 2 documents and use video to complete the "in-person" verification process? [New 03/25/2020]

A: Under temporary guidelines issued by the Department of Homeland Security (DHS) on March 20, 2020, the general answer is yes, with some important exceptions. For 60 days (until May 19, 2020) or until 3 business days after the termination of the National Emergency, whichever comes first, DHS will permit remote verification of the employee's identity and employment authorization documents, for purposes of completing Section 2. This means employers may inspect Section 2 documents remotely via video link, fax, e-mail, or other similar means. Remote verification is not permitted at locations where employees are physically reporting to work. However, if newly hired employees or existing employers are subject to a COVID-19 quarantine or lockdown protocols, DHS may accept an employer's use of remote verification, but only after a case-by-case evaluation. Employers must continue to follow all other standard I-9 procedures, including all normal deadlines for completing Sections 1, 2, and 3. Documents must by physically inspected within 3 business days after normal operations resume. Employers should enter "COVID-19" as the reason for the physical inspection delay, adding "documents physically examined" with the date of inspection to the Section 2 additional information field (or Section 3 for reverifications).

For employers not eligible to use Section 2 remote verification:

1. Have the new hire complete section 1 of the I-9 form remotely and designate a third party as an employer's authorized agent to verify the documents and complete section 2 of the I-9. The most recent I-9 instructions make clear that an employer can now designate anyone as an

Always Designing for People™

authorized representative to complete Section 2. Specifically, the instructions for the new version of Form I-9 (edition date of 10/21/2019) clarify that "[a]n authorized representative can be any person you designate to complete and sign Form I-9 on your behalf." Therefore, a notary, a family member, neighbor, or even a physician of the employee could be considered as an "authorized representative" of the employer if the employer authorized him or her during the COVID-19 pandemic, thus reducing the need for travel to a specific company worksite, etc., or allowing for an employee to work from home if quarantined.

Note that the employer will remain liable for any violations in connection with the I-9 or the verification process, including any violations committed by the person designated to act on behalf of the employer. Therefore, companies may face liability if they authorize a representative, such as a family member or friend, to verify an I-9 and that person is not knowledgeable on the Form I-9 rules and/or supporting materials. Please click here for a sample form which provides instructions to the authorized representative. The form is not required but is recommended. If used, the form should be retained with the I-9 form.

2. Have the new hire complete section 1 of the I-9 remotely and then complete section 2 of the I-9 as soon as section 2 can be completed by the employer in person with the employee. **Note however that this is not a cure for a late I-9 for which a penalty would normally apply**. In addition, while ICE **has not authorized this option** for delays due to COVID-19, in the context of natural disasters like Hurricane Katrina, the government previously advised that employers whose Form I-9s are missing and/or destroyed as a result of a natural disaster should complete a new I-9 as soon as possible and attach a memo stating the reasons why it was redone or completed late. Completing this memo would help demonstrate a good faith effort to comply with the law and may help mitigate any penalty.

Q. How do I handle a scenario where an employee or employer is not using a fully electronic I-9 solution and does not have access to a printer and therefore cannot affix a "wet" signature to the I-9 form? [New 03/26/2020]

A: There is no government guidance on how to handle signatures where the employee or employer does not have access to a printer or an e-signature solution in the context of Covid-19. Therefore, while the guidance presented here is not without risk to employers, the guidance represents what we believe to be best practical solutions at this time which might help reduce but may not eliminate all risk.

- If the employee is unable to physically sign an I-9 (e.g. due to lack of print capability) but the employer is able to sign the I-9 then the employer can complete section one as the "preparer" and sign as the "preparer" (but should not sign on the employee signature line).

If possible, consistent with DHS' remote I-9 protocols, an employer should have this portion done while in video conference to have a record of the process that could be provided to ICE if necessary.

- If video conferencing is not possible, at a minimum, employers should create a brief memo to keep with the I-9 or include a brief explanation in the "Other Information" field in Section 2 explaining the reason why the employee could not complete complete/sign section one. When operations onsite resume, the employee would update section 1 (e.g. sign/date section one) to show they personally verified the information.

- If the employer is also unable to print and sign or access an e-sign compliant solution then the employer should sign using a solution that allows for some form of electronic signature (ex. Word ® or Adobe ®) but must also affix a wet signature and date (without back dating) when operations resume. If the employer does not have access to some form of electronic signature then a wet signature should be affixed when operations resume.

WORKERS' COMPENSATION

Q: If employees claim COVID-19 infections arose out of work-related contacts, are such claims covered by workers' compensation benefits?

A: Workers compensation coverage may be available in connection with provable workplace exposures that lead to infection and COVID-19 disease, but will depend on state law. This may provide some protection for employers concerned about potential liability and damages. However, where there is wide-spread community spread of the virus, it may be difficult if not impossible to prove that the exposure that lead to infection occurred at work.

Q: Does my workers' compensation policy cover employees working from home?

A: In general, an employee injury or illness is compensable under workers' compensation if it arises out of and in the course of employment, regardless of the location the injury occurs. Employees typically have the burden of proving that the injury is work-related. "Arising out of" refers to what the employee was doing at the time of the injury, and "in the course of" refers to when the injury happened. To successfully claim workers' compensation benefits, the employee must show that he or she was acting in the interest of the employer at the time the injury occurred. Workers' compensation laws vary by state, and employers are encouraged to work with their workers' compensation carriers as well as their legal counsel to determine strategies to manage workers' compensation risks for their telecommuters.

Q: I have an associate showing potential symptoms of the Coronavirus, should I report this as a workers' compensation claim?

A: If you feel that the sickness could be considered work related, please report through your normal workers' compensation claims reporting procedures. Your carrier will investigate the claim and determine compensability. Workers compensation coverage may be available in connection with provable workplace exposures that lead to infection and COVID-19 disease, but will depend on state law. This may provide some protection for employers concerned about potential liability and damages. However, where there is wide-spread community spread of the virus, it may be difficult if not impossible to prove that the exposure that lead to infection occurred at work.

Q: I have an associate that has tested positive for the Coronavirus, should I report this as a workers' compensation claim?

A: If you feel that the sickness could be considered work related, please report through your normal workers' compensation claims reporting procedures. Your carrier will investigate the claim and determine compensability. Workers compensation coverage may be available in connection with provable workplace exposures that lead to infection and COVID-19 disease, but will depend on state law. This may provide some protection for employers concerned about potential liability and damages. However, where there is wide-spread community spread of the virus, it may be difficult if not impossible to prove that the exposure that lead to infection occurred at work.

EMPLOYEE LEAVE

Q: Does federal FMLA cover employees who are directed to work remotely?

A: No, if employees are working remotely, there is no basis to classify them as on leave, FMLA or otherwise.

Q: Does federal FMLA cover employees who are directed to remain out of work but are unable to work remotely? [Updated 03/25/2020]

A: No, the federal FMLA would not cover this situation, however, some state or local leave laws provide leave in cases of public health emergencies. Please also note that, as of April 1st, the FFCRA amends the FMLA to allow an employee who has been employed at least 30 days and who is unable to work (or telework) to take up to 12 weeks of leave to care for the employee's son or daughter (under 18 years of age) if the child's elementary or secondary school or place of care has been closed, or the childcare provider is unavailable, due to a public health emergency such as

COVID-19. Employees taking leave shall be paid at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to $200 per day and $12,000 in the aggregate (over a 12-week period—two weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave). This amendment to the FMLA only applies to private employers with fewer than 500 employees and most public employers.

Q: What benefits may be available to employees who are unable to work due to illness during a pandemic? [Updated 03/25/2020]

A: If eligible, federal FMLA likely would cover these absences. As of April 1st, employees are entitled to up to 80 hours of paid sick leave under the FFCRA for employers with fewer than 500 employees. State or local leave laws, company paid time and leave policies also might cover these absences. It is unclear whether the ADA or analogous state or local disability discrimination laws would provide protections in these instances. Please remember to check guidance for California employees.

WARN ACT / MASS LAYOFFS

Q: Do I have to provide notice under the WARN Act if I have to layoff employees due to the effects of the coronavirus on my business?

A: If you are a covered employer under the Worker Adjustment and Retraining Notification (WARN) Act and there is a triggering event such as a "plant closing" or "mass layoff", then you must abide by the WARN Act's notice requirements. With that said, under the WARN Act, there is a specific limited exception when layoffs occur due to unforeseeable business circumstances. This may apply to the effects of the coronavirus on your business but it is by no means guaranteed. There is a fact specific analysis that must be undertaken, and we would suggest partnering with legal counsel for a complete assessment. Please note there may be additional notice requirements if employees work in a state that have "mini-WARN" laws, including emergency legislations that have recently passed due to COVID-19.

Q: Because business is declining due to the COVID-19, I don't have enough work for all my employees anymore. What alternatives do I have to layoffs? [New 03/25/2020]

A: Many states have adopted shared-work programs to provide employers with an alternative to layoffs. Under these programs, the employer temporarily reduces the hours of a group of employees, and the affected employees collect partial unemployment benefits. Another option is offering unpaid time off to employees in the form of a furlough.

Always Designing for People™

FURLOUGHS

Q: Is there a furlough law? [New 03/25/2020]

A: No. There is no federal or state law called a "furlough" law. Instead, the term "furlough" is loosely used by employers to refer, most often, to a reduction in the number of days or weeks that an employee works. The Families First Coronavirus Response Act ("FFCRA"), which is effective April 2, 2020, does not address furloughs. As discussed below, the lack of a specific furlough law does not excuse an employer from complying with a host of other laws that may be implicated.

Q: Are there other laws that may be triggered by furloughing employees? [New 03/25/2020]

A: Yes. The federal Worker Adjustment and Retraining Notification Act ("WARN") is one of the more common laws that may be triggered. Federal WARN requires that certain written notification be provided to employees and others who are affected by plant closings and mass layoffs. However, WARN notifications would not be required if (i) a furlough is temporary and the intent is for the employees to return to their jobs on a definite date; and (ii) the furlough does not extend beyond 6 months. If WARN notice is required, federal WARN also permits delayed notice in the case of unforeseeable business circumstances and natural disasters such as COVID-19.

However, employers must also review state law because some states have mini-WARN laws, which may be more onerous than federal WARN. For example, there is no "unforeseen business circumstances" exception in California's mini-WARN law, but there is an exception for a "physical calamity." There is no definition of "physical calamity" under California law. Some states are also temporary modifying their mini-WARN laws in light of COVID-19.

Q: Will reducing hours instead of furloughing employees trigger the WARN Act? [New 03/25/2020]

A: Maybe. An employee suffers an employment loss under the federal WARN Act if he suffers a reduction in hours of more than 50% in each month of a consecutive 6-month period. Again, employers should also check state mini-WARN laws.

Q: Are there any wage hour issues to be aware of when reducing hours, days or weeks?

Always Designing for People™

A. Yes. There are requirements relating to non-exempt and exempt employees pursuant to the Fair Labor Standards Act ("FLSA"). Employers should check state and local requirements for any additional obligations. Federal obligations are summarized as follows:

Non-Exempt Employees – The FLSA provides that non-exempt employees must be paid for all hours worked, plus overtime when working more than 40 hours in a work week. Conversely, they do not have to be paid for any non-worked hours *even if the absences were required by the employer due to a business slowdown or customer site closing*. If an employee wants to work but either elects not to come to work or is prohibited from doing so by the employer, due to quarantine, a furlough, a reduction in hours or a closure the employee does not have to be paid for hours that were not worked.

Salaried Exempt Employees - The FLSA rules are different for salaried exempt employees.

Closures and Furloughs

- In circumstances involving a company closing or furloughs, exempt, salaried employees generally must receive their full salary in any week in which they perform *any work*, subject to certain very limited exceptions.

- Where an employer offers a bona fide benefits plan or vacation time to its employees, there is no prohibition on an employer requiring that such accrued leave or vacation time be taken during a closure or furlough. Therefore, an employer may direct exempt staff to take vacation or debit their leave bank account in the case of an office closure or furlough whether for a full or partial day, provided the employees receive in payment an amount equal to their guaranteed salary. In the same scenario, an exempt employee who has no accrued benefits in the leave bank account, or has limited accrued leave and the reduction would result in a negative balance in the leave bank account, still must receive the employee's guaranteed salary for any absence(s) occasioned by the office closure in order to remain exempt form overtime.

- In jurisdictions with statutory paid sick leave employers generally cannot require the employee to use paid sick leave where the absence is not caused by an actual illness.

- If the employee performs any work during a furlough or closure, the full salary must be paid for the week in which the work was performed.

- Exempt salaried employees are not required to be paid their salary in weeks in which they perform no work, even if they were ready willing and able to work but the employer ordered the employee not to work due to a closure, quarantine or furlough.

- Some states may have additional laws for the pay of exempt employees.

Reductions in Pay to Reduce Labor Costs

- To the extent there will be any reduction in the rate of pay for salaried exempt employees, the employer should provide specific advance written notice.

- Pursuant to DOL guidance, an employer is not prohibited from prospectively reducing the salary of exempt employees during a business or economic slowdown, "provided the change is bona fide and not used as a device to evade the salary basis requirements."

- Deductions from predetermined pay occasioned by day-to-day or week- to-week determinations of the operating requirements of the business constitute impermissible deductions from the predetermined salary and would result in loss of the exemption.

- The difference is that the first instance involves a prospective reduction in the predetermined pay to reflect the long-term business needs, rather than a short-term, day-to-day or week-to-week deduction from the fixed salary for absences or reductions in scheduled work occasioned by the employer or its business operations.

- Neither the DOL nor the courts have established a specific time period that is considered "long term business needs." The issue is whether the employer is making changes based on short term fluctuations in business or based on an unknown, indefinite change in business circumstances.

Workers on Visas

There are different rules for foreign nationals employed pursuant to temporary non-immigrant visas. There may be restrictions on working remotely, changes in location, changes in pay and changes in hours.

Q: Are there requirements to give employees advance notice? [New 03/25/2020]

Always Designing for People™

A: Yes. Under the FLSA, notice of any changes in pay should be provided in advance of the pay period in which the change will occur. Additionally, employers should check state and local requirements regarding advance notice of employee schedules and any changes in pay.

Q: Are there other pay requirements to consider? If I am forced to close temporarily, does that trigger my state's final pay requirements? [New 03/25/2020]

A. Yes. Some states have final paycheck laws that may be implicated. Final pay rules differ from state to state, so check the law in the state where your employees work. Generally, though, short-term furloughs with a definite return date (that is clearly communicated to employees) wouldn't trigger final pay requirements. Thus, any pay owed to the employee would due be on their next regular payday. However, some states may have stricter rules. For example, in California, a furlough longer than 10 days or a pay period not longer than 14 days should be considered a layoff. If it is a layoff (i.e. no work for longer than a pay period) all accrued but unused vacation and PTO must be paid out. If accrued but unused vacation and PTO is not paid out, the employer may owe waiting time penalties.

Q: Do the FFCRA's FMLA and paid sick leave benefits apply to furloughed employees? [Updated 03/30/2020]

A. Probably not. In its latest guidance, the DOL explained that if an employee's worksite is closed, whether before or after April 1, and whether or not the employer's employees are on leave, once the business is closed, its employees are not eligible for any type of leave under FFCRA. The DOL notes that these employees may be eligible for state unemployment insurance. Similarly, employees who have been furloughed or whose schedules are reduced are not eligible for FFCRA leave of any kind.

Q: Are there benefits issues to consider? [New 03/25/2020]

A. Yes. Employer must review their benefits and other policies to determine what, if any, impact furloughs will have and what they need to do if they are going to "bridge the gap." Employees who will have benefits discontinued will likely need to receive COBRA notice.

Q: Could a furloughed employee be entitled to unemployment benefits? [New 03/25/2020]

A. Maybe. Unemployment benefits are determined at the state level. Plus, some states have enacted special rules in light of COVID-19.

Always Designing for People™

UNEMPLOYMENT INSURANCE [New 03/25/2020]

Individual state law, within broad federal requirements, will ultimately determine eligibility for unemployment insurance benefits. The federal government, through guidance (*Unemployment Insurance Program Letter 10-20*) and legislation (*Emergency Unemployment Insurance Stabilization and Access Act 0f 2020*), is making an effort to provide states with greater flexibility to make as many individuals affected by the COVID-19 virus as eligible as possible.

Q: Is an employee eligible for unemployment insurance (UI) if they cannot work due to office closure or if they can't come to work due to illness or quarantine? [New 03/25/2020]

A: Individuals are generally eligible to receive unemployment insurance benefits if they are out of work through no fault of their own, available for work, and actively seeking work. Additionally, the U.S. Department of Labor issued Unemployment Insurance Program Letter 10-20 on March 12, 2020 - *Unemployment Compensation (UC) for Individuals Affected by the Coronavirus Disease 2019 (COVID-19)*.

In response to a question on individuals under quarantine, it says in part: "Federal law would permit a state to treat the separation for the period of the quarantine as a temporary layoff." So, if individuals meet all of the other eligibility requirements the state would be permitted to determine the individuals eligible for UI benefits.

Q: Can hourly employees, not being paid during closures, apply for unemployment benefits? [New 03/25/2020]

A: Anyone can apply for unemployment benefits. Individuals with sufficient prior wages who are out of work through no fault of their own, available for work, and actively seeking work are generally eligible to receive benefits. Whether the individuals were compensated on an hourly or salary basis does not matter.

Q: For those employees that we reduce hours to 20 hours a week, can they apply for unemployment or other aid to make up the other 20 hours? [New 03/25/2020]

A: The U.S. Department of Labor issued Unemployment Insurance Program Letter 10-20 on March 12, 2020 - *Unemployment Compensation (UC) for Individuals Affected by the Coronavirus Disease 2019 (COVID-19)*. It states in part that "the Short-Time Compensation (STC) program, also known as work-sharing, helps employers avert layoffs.
The program allows employers with a state-approved STC plan to reduce the hours of the employees in lieu of layoffs, while permitting these employees to receive payment for partial

unemployment." Additionally, the *Emergency Unemployment Insurance Stabilization and Access Act Of* 2020 directs the Secretary of Labor to assist states in establishing, implementing, and improving the employer awareness of STC programs. There are currently 28 states who have enacted or amended STC laws.

Here is a link to the U.S. Department of Labor website that lists the states with STC programs: https://stc.workforcegps.org/resources/2016/03/15/00/54/STC_State_Websites.

Employers need to contact the applicable state to implement a STC plan.

Q: Can employees of a non-profit organization receive unemployment benefits? [New 03/25/2020]

A: The tax filing status of the employer is not a relevant factor in determining an individual's eligibility for unemployment insurance benefits. Employees that meet the state's requirements for monetary eligibility and are out of work through no fault of their own, available for work, and actively seeking work are generally eligible to receive benefits. Non-profit employers that elect the reimbursement method of coverage are required to reimburse the state for any unemployment benefits paid to former laid-off workers that are attributable to the employer.

Q: If a business closes temporarily, can the employees file for unemployment? If so, what is the period of time that the business needs to be closed? [New 03/25/2020]

A: Yes, temporary business closures are a typical situation for unemployment insurance to step in and provide benefits to eligible individuals. States generally determine eligibility to individuals on a weekly basis and any wages paid during that week would reduce benefit eligibility.

Q: Is an employee eligible for unemployment insurance if they have a disability? [New 03/25/2020]

A: Assuming the individual was previously employed while having the disability, it would generally not be a factor in determining unemployment eligibility. Under existing state eligibility requirements, individuals must be available for suitable work, which would refer to the work previously performed by the individual.

Always Designing for People™

THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT (In effect as of April 1st)

Q: What does FFCRA cover in general?

A: FFCRA, which was enacted on March 18, 2020, guarantees free coronavirus testing, establishes paid family and medical leave and corresponding tax credits, enhances Unemployment Insurance, expands food security initiatives, and increases federal Medicaid funding. It is divided into the following sections:

A. Appropriations,
B. Nutrition Waivers, to allow students who receive free or reduced priced meals through schools to continue to receive them
C. Emergency Family and Medical Leave Act Expansion
D. Emergency Unemployment Insurance Stabilization and Access Act of 2020
E. Emergency Paid Sick Leave Act
F. Health Provisions, to help expand COVID-19 diagnostic testing and required tests to be performed at no cost to consumers
G. Tax Credits for Paid Sick and Paid Family and Medical Leave

This FAQ document addresses Sections C, E, Fand G.

Guidance Applicable to Emergency Family and Medical Leave Expansion and Emergency Paid Sick Leave Provisions [Updated 3.30.2020]

Q: How will the Emergency Family Medical Leave Expansion and Emergency Paid Sick Leave Provisions of the FFCRA impact my workplace? [Updated 03/25/2020]

A: These specific provisions of the FFCRA will impact employers with fewer than 500 employees. These employers will be required to provide a certain amount of paid sick and paid family leave to employees affected by COVID-19, and will receive corresponding employment tax credits. In addition, the FFRCA temporarily expands the reasons for which employees working for enterprises with fewer than 500 employees may take leave under the Family and Medical Leave Act (FMLA).

Q: When does the Emergency Family Medical Leave Expansion and Emergency Paid Sick Leave Provisions of the FFCRA take effect? [Updated 03/25/2020]

A: The provisions of the FFCRA take effect on **April 1, 2020.**

Q: Does FFCRA apply retroactively to leave taken before April 1? [New 03/25/2020]

A: No. According to the U.S. Department of Labor, leave taken before April 1 is not covered by FFCRA and employers will not be eligible for any tax credits for any paid leave provided prior to that date.

Q: Which employers are impacted by FFCRA? [Updated 03/25/2020]
A: The paid sick and paid family leave components impact employers with fewer than 500 employees. The bill authorizes the Secretary of the Department of Labor to issue regulations to (1) exclude certain healthcare providers and emergency responders from the definition of eligible employee and (2) exempt small businesses with fewer than 50 employees when it would jeopardize the viability of the business as a going concern.

On March 24, 2020, the DOL issued guidance in the form of questions and answers clarifying the exception for employers with fewer than 50 employees noting:

> *To elect this small business exemption, you should document why your business with fewer than 50 employees meets the criteria set forth by the Department, which will be addressed in more detail in forthcoming regulations.*
>
> *You should not send any materials to the Department of Labor when seeking a small business exemption for paid sick leave and expanded family and medical leave.*

Q: Which employees should be included for purposes of the Emergency FMLA and paid sick leave portions of the FFCRA? [New 03/25/2020]

A: The DOL has issued guidance clarifying that you should include:

- Full-time and part-time employees within the United States, including any State of the United States, the District of Columbia, or any Territory or possession of the United States.
- Employees on leave;
- Temporary employees who are jointly employed by you and another employer (regardless of whether the jointly-employed employees are maintained on only your or another employer's payroll); and

- Day laborers supplied by a temporary agency (regardless of whether you are the temporary agency or the client firm if there is a continuing employment relationship).

Independent contractors should not be included for purposes of the 499-employee threshold.

Q: My company has multiple divisions and subsidiaries. Which ones should be included when determining whether I have fewer than 500 employees? [New 03/25/2020]

A: The DOL's current guidance states that typically, a corporation (including its separate establishments or divisions) is considered to be a single employer and its employees must each be counted towards the fewer than 500-employee threshold. Where a corporation has an ownership interest in another corporation, the two corporations are separate employers unless they are joint employers under the FLSA with respect to certain employees. If two entities are found to be joint employers, all of their common employees must be counted in determining whether paid sick leave must be provided under the Emergency Paid Sick Leave Act and expanded family and medical leave must be provided under the Emergency Family and Medical Leave Expansion Act.

Q: What about separate but related companies? How should we count our employees? [New 03/25/2020]

A: The DOL has adopted the integrated employer test under the FMLA. Generally, this test requires an evaluation of a number of factors to determine whether two entities should be considered an integrated employer for purposes of aggregating the total number of employees they have. These factors include: common management, interrelation between operations, centralized control of labor relations; and the degree of common ownership/financial control. If the totality of the circumstances weigh in favor of the entities being considered an integrated employer, then the combined entity should count of their employees toward determining whether the entity has 499 employees or fewer.

Q: When do I count my employees for purposes of determining whether I have fewer than 500? [New 03/25/2020]

A: According to the Department of Labor, employers need to count their employees as of the date the leave is to begin. This means that if one employee's leave begins on Monday, when the employer has 503 employees, that employee would not be entitled to leave under FFCRA. If another employee's leave begins on Friday and the company's headcount has dipped to 499, the second employee would be entitled to leave under FFCRA.

Q: How do I calculate the regular rate of pay for purposes of FFCRA leave? [New 03/25/2020]

A: For both FFCRA Emergency FMLA leave and paid sick leave, the DOL has explained that the regular rate of pay for FFCRA is the average of the employee's regular rate over a period of up to six months prior to the date on which the employee takes leave. If the employee has not worked for you for six months, the regular rate used to calculate their paid leave is the average of their regular rate of pay for each week they have worked for you. If the employee is paid with commissions, tips, or piece rates, these wages must be incorporated into the above calculation. You can also compute this amount for each employee by adding all compensation that is part of the regular rate over the above period and divide that sum by all hours actually worked in the same period.

Q: Have any federal agencies provided guidance on how the FFCRA will be interpreted?

A: Yes, the DOL has provided guidance with an FAQ here and guidance on paid leave here. The IRS also has published guidance here.

Q: Do the FFCRA's FMLA and paid sick leave benefits apply to furloughed employees? [Updated 03/30/2020]

A. Probably not. In its latest guidance, the DOL explained that if an employee's worksite is closed, whether before or after April 1, and whether or not the employer's employees are on leave, once the business is closed, its employees are not eligible for any type of leave under FFCRA. The DOL notes that these employees may be eligible for state unemployment insurance. Similarly, employees who have been furloughed or whose schedules are reduced are not eligible for FFCRA leave of any kind.

Q: Do employees have to provide documentation of their need for Emergency Paid Sick Leave or Emergency FMLA Leave? [New 3/30/2020]

A: Yes. The DOL clarified that employers must require employees to provide appropriate documentation to support the taking of FFCRA paid sick or paid family leave. For paid sick leave, employees must provide documentation showing:

- The employee's name;
- Qualifying reason for requesting leave,
- A statement that the employee is unable to work, including telework, for that reason, and
- The date(s) for which leave is requested.

- Documentation of the reason for the leave, such as the source of any quarantine or isolation order, or the name of the health care provider who has advised self-quarantine.

For employees seeking to take FFCRA paid family leave, employees will be required to provide similar documentation, including documentation supporting the need for leave. The DOL suggests this might include a notice posted on a government, school or day care website informing individuals of the closure.

Q: Can employees take leave under the FFCRA intermittently? [New 3/30/2020]

A: For some types of leave, yes. The DOL clarified that paid sick and paid family leave may be taken intermittently under certain circumstances. These leaves can be taken intermittently only for child care reasons, and then only if the employer consents to allow it.

Q: Are employees who are affected by business closures or shelter in place orders entitled to take leave under the FFCRA? [New 3/30/2020]

A: No. The DOL explained that if an employee's worksite is closed, whether before or after April 1, and whether or not the employer's employees are on leave, once the business is closed, its employees are not eligible for any type of leave under FFCRA. The DOL notes that these employees may be eligible for state unemployment insurance.

Q: How does FFCRA affect any of my existing paid leave offerings? [New 3/30/2020]

A: Employees may not use employer-provided leave simultaneously with any leave under FFCRA, unless the employer agrees to allow the employee to supplement the amount they receive from paid sick leave or expanded family and medical leave under the FFCRA. The DOL clarified, however, that leave under the FFCRA is in addition to any employer-provided leave entitlements. Employees may choose to use existing paid vacation, personal, medical, or sick leave to supplement the amount they receive from paid sick leave or expanded family and medical leave, up to the employee's normal earnings.

Employers are not required to permit an employee to use existing paid leave to supplement the amount the employee receives from paid sick leave or expanded family and medical leave. Employers may not claim, and will not receive tax credit, for such supplemental amounts. Finally, employers may not require employees to supplement FFCRA pay with any paid leave amounts otherwise available to the employee under the employer's paid leave plans. Only employees may make that decision.

Always Designing for People™

Emergency Family and Medical Leave Expansion Act (Emergency FMLA Act)

Q: Which employers are covered by the FFCRA Emergency FMLA Act? [Updated 03/25/2020]

A: Employers with fewer than 500 employees. The Department of Labor may issue regulations excluding from the definition of employer (1) certain health care providers and emergency responders; and (2) small businesses with under 50 employees when imposing such requirement would jeopardize the business. We anticipate any future regulations would address the extent to which such categories of employers will be excluded and any requirements for an employer to be excluded. . See general guidance above for more details about which employees to include, when to count them, how to evaluate potential integrated employer situations, etc.

Q: Are there any exceptions for health care providers and emergency responders? [New 03/25/2020]

A: In addition to the Department of Labor's ability to exclude certain employers, an employer of an employee who is a health care provider or an emergency responder may elect not to provide FFCRA Emergency FMLA leave to such employees.

Q: Which employees are eligible to take leave under the FFCRA Emergency FMLA Act? [Updated 03/25/2020]

A: Employees who have been employed for at least 30 calendar days are eligible, except the Secretary of Labor may exclude health care providers and emergency responders from being considered eligible employees. The DOL has provided clarification that an employee is considered to have been employed for at least 30 calendar days if the employee was on your payroll for the 30 calendar days immediately prior to the day their leave would begin. For example, if an employee wanted to take leave on April 1, 2020, they would need to have been on your payroll as of March 2, 2020. If an employee has been working as a temporary employee, and you subsequently hire them on a full-time basis, you should count the days previously worked as a temporary employee toward the 30-day eligibility period.

Q: How much leave are eligible employees entitled to take?

A: Eligible employees are entitled to take up to 12 weeks of job protected leave.

Q: Are employees entitled to an additional 12 weeks of leave under the FFCRA Emergency FMLA Act, or is the total leave for all FMLA reasons limited to 12 weeks?

A: Total leave under the FMLA, including leave under the FFRCA and for previously existing FMLA-qualifying situations, is limited to 12 weeks.

Q: Are there any exceptions to the requirement that the leave be job-protected?

A: Employers with fewer than 25 employees are not required to provide job-protected leave for an employee taking leave if the employee's position no longer exists following leave due to operational changes occasioned by a public health emergency provided that: (1) the employer makes reasonable efforts to restore the employee to an equivalent position; and (2) the employer makes reasonable attempts to contact the employee for a period of one-year following a certain period if an equivalent position becomes available.

Q: What are the reasons an employee can take leave?

A: Eligible employees can take leave for "a qualifying need related to a public health emergency." A qualifying need related to a public health emergency for purposes of FFCRA Emergency FMLA Act is limited to when an employee is unable to work (or telework) due to a need to care for a son or daughter under the age of 18 if the child's school or place of care has closed OR the child care provider of such child is unavailable due to the public health emergency.

Q: Must leave under this provision be paid? [Updated 03/25/2020]

A: The first 10 days of the leave can be unpaid. An employee may elect – but cannot be required – to use accrued vacation, personal or medical or sick leave for those days. The remainder of the leave must be paid at two-thirds the employee's regular rate of pay, for the number of hours the employee would otherwise be scheduled to work. For employees who have weekly working hours that fluctuate, the employer is allowed to take an average over a six-month period. If the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work controls. Paid leave is subject to a limit of $200 per day, and up to a total amount of $10,000.

Q: Can I take a credit for the amount I pay my employees in paid leave?

A: Yes. See Section Tax Credits for Paid Sick and Paid Family and Medical Leave below.

Q: For how long is the FFCRA Emergency FMLA Act in effect? [Updated 3/30/2020]

A: The FFCRA Emergency FMLA Act is effective between April 1, 2020 and December 31, 2020. It does not apply to leave taken prior to April 1, 2020.

Emergency Paid Sick Leave Act

Q: Which employers are covered by the FFCRA Emergency Paid Sick Leave Act? [Updated 03/25/2020]

A: Employers with 500 or fewer employees, except that businesses with under 50 employees may claim the small business exemption from child care-related paid sick leave requirements if it would jeopardize viability of the business. It is unclear at this time how employers would demonstrate an exemption should apply and we anticipate any future regulations would address this issue. See general guidance above for more details about which employees to include, when to count them, how to evaluate potential integrated employer situations, etc.

Q: Are there any exceptions for health care providers and emergency responders?

A: An employer of an employee who is a health care provider or an emergency responder may elect not to provide FFCRA paid sick leave to such employees.

Q: Which employees are eligible to take leave under the FFCRA Emergency Paid Sick Leave Act?

A: All employees are eligible to take paid sick leave under the FFCRA regardless of how long they have been employed by the employer.

Q: How much leave are eligible employees entitled to take? [Updated 03/25/2020]

A: Full-time employees are entitled to take up to 80 hours paid sick leave. Part-time employees are eligible for a number of hours equal to the average hours worked over a two-week period. The DOL clarified that part-time employees are entitled to leave for their average number of work hours in a two-week period. Therefore, employers should calculate hours of leave based on the number of hours the employee is normally scheduled to work. If the normal hours scheduled are unknown, or if the part-time employee's schedule varies, you may use a six-month average to calculate the average daily hours. Such a part-time employee may take paid sick leave for this number of hours per day for up to a two-week period, and may take expanded family and medical leave for the same number of hours per day up to ten weeks after that.

If this calculation cannot be made because the employee has not been employed for at least six months, use the number of hours that you and your employee agreed that the employee would work upon hiring. And if there is no such agreement, you may calculate the appropriate number of hours of leave based on the average hours per day the employee was scheduled to work over the entire term of his or her employment.

The DOL also provided this example:

> *For example, an employee who is scheduled to work 50 hours a week may take 50 hours of paid sick leave in the first week and 30 hours of paid sick leave in the second week. In any event, the total number of hours paid under the Emergency Paid Sick Leave Act is capped at 80.*

Q: For what reasons are employees entitled to take paid sick leave?

A: Employees who are unable to work or telework due to any one or more of the following conditions:

1. They are subject to a Federal, State, or local quarantine or isolation order ("isolation order") related to COVID-19;
2. They have been advised by a health care provider to self-quarantine due to concerns related to COVID-19 ("quarantined employee");
3. They are experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. They are caring for an individual who is subject to an isolation order or is a quarantined employee;
5. They are caring for a son or daughter if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions; or
6. They are experiencing any other substantially similar condition as specified by the Secretary of Health and Human Services.

Q: How much are eligible employees entitled to be paid?

A: Paid sick leave will be based on employees' regular compensation, but is capped at a maximum 100% of wages up to $511 per day (and a total of $5,110) for employees in categories 1-3 above, and two-thirds of wages up to $200 per day (and a total of $2,000) for employees in categories 4-6 above.

Q: What impact does this have on my existing sick leave policy?

A: This paid sick leave is in addition to any existing sick leave provided by the employer (including subject to state or local requirements). An employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses the paid sick time under the Act. Nothing expressly prohibits employers from changing their leave programs after the law is enacted, however the employee relations impact of doing so should be carefully considered.

Q: When will the Department of Labor begin enforcing the Emergency Paid Sick Leave provisions?

A. On March 20, 2020, the Department of Labor, Treasury and the Internal Revenue Service issued a joint news release announcing that emergency guidance will be issued for a 30-day non-enforcement window provided that employers implement good faith compliance. Go to https://www.dol/newsroom/releases/osec/osec20200320 for further information.

Health Provisions

Q: What new requirements have been imposed on group health plans?

A. A group health plan (GHP) is required to cover without any cost or cost sharing (including deductibles, copayments, and co-insurance) on COVID-19 testing and testing-related services. In addition, a GHP cannot require prior authorization or other medical management related requirements in the event a covered individual must be tested for COVID-19. These requirements apply regardless of whether a GHP is fully-insured or self-insured.

Q: What testing-related services are covered by this requirement?

A: To the extent the services are necessary to determine whether COVID-19 testing is necessary, testing-related services would include:

- In person and telemedicine visits
- Urgent care visits
- Emergency room visits

Q: When is this requirement effective?

A: March 18, 2020.

Always Designing for People™

Tax Credits for Paid Sick and Paid Family and Medical Leave

Paid Sick Leave Tax Credits

Q: Will I be entitled to take a credit for the amounts that I pay in paid sick leave under FFCRA?

A: Yes. All employers, except for government employers, required to pay paid sick leave under the FFCRA will be entitled to take a tax credit for the amount paid. These non-government employers will be entitled to a refundable federal employment tax credit for the entire amount that they pay in paid sick leave.

Q: Are government employers eligible for a tax credit for paid sick leave?

A: No. The credit does not apply to the government of the United States, the government of any State or political subdivision or any agency or instrumentality of such government.

Q: Are there limits to the tax credit I can receive for paid sick leave?

A: Yes. Credits may not exceed amounts paid for emergency paid sick leave up to the amounts described above. Because the credit is fully refundable, employers will receive reimbursement of the amount paid, subject to the caps, even if their tax liability is less than the amount paid out in emergency paid sick leave.

Q: Am I entitled to a credit for the cost of maintaining health insurance coverage while my employee is out on leave? [Updated 03/25/2020]

A: Yes. Eligible employers are entitled to an additional tax credit based on the cost of maintaining health insurance coverage for the eligible employee during the leave period.

Q: How will this tax credit be made available? [Updated 03/25/2020]

A: On March 20, 2020, the Department of Labor, Treasury and the Internal Revenue Service issued a joint news release providing examples of how the tax credit works. The Departments noted that for businesses to take immediate advantage of the paid leave credits, businesses can retain and access funds that they would otherwise pay to the Internal Revenue Service (IRS) in payroll taxes.

If those amounts are not sufficient to cover the cost of paid leave, employers can seek an expedited advance from the IRS by submitting a streamlined claim form that is expected to be released in the coming weeks.

Go to https://www.dol.gov/newsroom/releases/osec/osec20200320 for further information.

Paid Family Leave Tax Credits

Q: Will I be entitled to take a credit for the amounts that I pay in paid family leave under FFCRA?

A: Yes, all employers except for government employers, are entitled to a refundable federal employment tax credit for the entire amount that they pay to eligible employees. Because the credit is fully refundable, employers will receive full reimbursement of the amount paid regardless of their actual tax liability.

Q: Are government employers eligible for a tax credit for paid family leave?

A: No. The credit does not apply to the government of the United States, the government of any State or political subdivision or any agency or instrumentality of such government.

Q: Are there limits to the tax credit I can receive for paid family leave?

A: Yes. Credits may not exceed amounts paid for an individual with respect to family medical leave, i.e., $200 per day, and an aggregate of $10,000 with respect to all calendar quarters.

Q: Am I entitled to a tax credit for the cost of maintaining health insurance coverage while my employee is out on leave?

A: Yes. Eligible employers are entitled to an additional tax credit based on the cost of maintaining health insurance coverage for the eligible employee during the leave period.

Q: For how long will the credits under FFCRA be in place?

A: Like the paid sick and paid family leave provisions, the tax credits created by FFCRA will sunset effective December 31, 2020.

Q: How will this tax credit be made available?

A: On March 20, 2020, the Department of Labor, Treasury and the Internal Revenue Service issued a joint news release providing examples of how the tax credit works. The Departments noted that for businesses to take immediate advantage of the paid leave credits, businesses can retain and access funds that they would otherwise pay to the Internal Revenue Service (IRS) in payroll taxes. If those amounts are not sufficient to cover the cost of paid leave, employers can seek an expedited advance from the IRS by submitting a streamlined claim form that is expected to be released in the coming weeks.

Go to https://www.dol.gov/newsroom/releases/osec/osec20200320 for further information.

FFCRA Employee Rights Notice

Q: Is there a required poster or notice to employees? [New 03/25/2020]

A: Yes. All employers covered by the paid sick leave or expanded family and medical leave provisions of the FFCRA are required to post the Department of Labor notice listing employee rights.
The Department of Labor FFCRA poster is available at https://www.dol.gov/agencies/whd/pandemic.

Note that the Department of Labor has provided one poster for use by private employers covered by the FFCRA and another poster for use by federal employers.

Q: My employees are teleworking. Where should I post the required notice? [New 03/25/2020]

A: The Department of Labor requires each covered employer to post the FFCRA employee rights notice in a "conspicuous place on its premises." An employer can satisfy this requirement by emailing or direct mailing the notice to current employees or by posting the notice on an internal or external employee information website.

Q: Do I have to provide the notice to employees that were recently laid off? [New 03/25/2020]

A: No. The Department of Labor has stated that the employee rights notice only applies to current employees.

Q: Do I have to provide the notice to new hires? [New 03/25/2020]

A: Yes. As with current employees, employers must provide a copy of the employee rights notice to new hires either by posting the notice in a conspicuous place on the employer's premises, or by email, direct mail, or by posting on an internal or external employee information website.

Q: Do I have to post the notice in multiple languages? [New 03/25/2020]

A: No, at this time employers are only required to post the notice in English. However, the Department of Labor is translating the notice into other languages, which will be made available on the Department of Labor Wage and Hour Division's website.

Q: If my state provides greater protections than the FFCRA, do I still have to post this notice? [New 03/25/2020]

A: Yes. The Department of Labor has advised that all employers covered by the FFCRA must post the notice regardless of whether their state offers greater protections to employees. Employers must comply with both federal and applicable state law.

SMALL BUSINESSES [New 03/25/2020]

Q: My business is severely impacted by COVID-19. Is there any help available? [New 03/25/2020]

A: The federal government, many states, and some local jurisdictions are considering legislation and programs that would provide assistance to impacted businesses. For instance, the U.S. Small Business Administration is offering designated states and territories low-interest federal disaster loans for working capital to small businesses suffering substantial economic injury as a result of the COVID-19.

For additional information, contact the SBA disaster assistance customer service center 1-800-659-2955 (TTY: 1-800-877-8339) or e-mail disastercustomerservice@sba.gov.

OSHA Recordkeeping [New 03/25/2020]

Q: Is an employee confirmed with COVID-19 recordable on the OSHA 300 Log? [New 03/25/2020]

A: COVID-19 can be a recordable illness if a worker is infected as a result of performing their work-related duties. However, employers are only responsible for recording cases of COVID-19 if all of the following are met:

1. The case is a confirmed case of COVID-19 (see CDC information on persons under investigation and presumptive positive and laboratory-confirmed cases of COVID-19);
2. The case is work-related, as defined by 29 CFR 1904.5; and
3. The case involves one or more of the general recording criteria set forth in 29 CFR 1904.7 (e.g. medical treatment beyond first-aid, days away from work).

Q: Is an employee confirmed with COVID-19 reportable to OSHA? [New 03/25/2020]

A: The only way a COVID-19 case would be **reportable** to OSHA would be if the employee passes away or is hospitalized as an in-patient (out patient hospitalizations are not reportable to OSHA) as a result of COVID-19 contracted from performing work-related duties. The normal criteria for reporting serve injuries applies even to COVID-19 cases. Employers must report any worker fatality within 8 hours and any amputation, loss of an eye, or hospitalization of a worker within 24 hours. It should be noted that even employers who are exempt from recordkeeping must report a severe injury if it meets these criteria.

Benefits [New 03/26/2020]

Q: Are employers waiving benefit co-pays or deductibles that are related to COVID-19? [New 03/26/2020]

A: Each employer's approach may be different, however on March 11, 2020, the IRS issued guidance via Notice 2020-15 that eliminates barriers for testing and treatment of COVID-19 (coronavirus) for health savings account (HSA) participants under a high deductible health plan (HDHP) due to the current public health emergency. Notice 2020-15 states that individuals covered by an HDHP that provides testing and treatment of COVID-19 prior to the satisfaction of the applicable minimum deductible will not fail HDHP requirements. Additionally, individuals covered by a plan offering COVID-19 testing and treatment regardless of deductible requirements will remain HSA eligible individuals. Note that it is still up to employers on whether to provide this relief under their HDHP group health plans.

Q: Are employees eligible for continuation of health insurance if there is a furlough or a layoff? [New 03/26/2020]

A: Generally, a furlough is not a COBRA qualifying event, unless it results in a loss of group health coverage. If the furlough results in a loss of health coverage, the employer must issue COBRA notices and allow affected individuals to elect COBRA continuation coverage.

Always Designing for People™

Q: If employees voluntarily reduce their work hours at the employer's request due to the pandemic, will the employees still be eligible for health insurance based on their hours worked? [New 03/26/2020]

A: Whether an employee is eligible for group health benefits is determined under the eligibility terms of the plan. However, if an employee were to become ineligible for group health benefits due to a reduction in hours, that would constitute a qualifying event that would trigger continuation of group health benefits under COBRA. Note that for employers who tie eligibility for group health benefits to an employee's full-time status under the ACA definition of full-time employee and use the look back measurement method to determine eligibility, whether or not the employee is in a stability period should be taken into consideration before discontinuing benefits due to a reduction in hours.

Q: If an employee waived health care coverage during open enrollment and wants to elect it now, must the employer allow the enrollment? Is it a qualifying event? [New 03/26/2020]

A: Currently, electing coverage outside of a new hire or open enrollment period due to a national health emergency is not an enumerated special enrollment right due to a loss of coverage or qualifying life event under HIPAA.

Q. I am placing employees on furlough. Do I need to/can I offer them COBRA? [New 03/26/2020]

A. Generally, a furlough is not considered to be a qualifying event under COBRA unless it results in a loss of coverage. Employers should refer to their plan documents to determine whether employees placed on furlough are entitled to benefits continuation as if they are an actively at work employee. If the plan document is not clear, employees on furlough can be treated the same as employees who have a reduction in hours (even if hours are reduced to zero). If as a result of being placed on furlough the employee would then loss coverage, and the employer is subject to COBRA, it must send out COBRA election packets and offer continuation coverage for its COBRA-eligible plans.

Q: I am placing employees on furlough. Can I continue to keep them on our benefit plan? If so, can I increase their share of the premium? [New 03/26/2020]

A: ADP recommends that employers consult with experienced benefit counsel to review the eligibility terms of its benefit plans and any carrier contracts before making any changes to their group health plans.

Q: Generally, what are best benefits practices for furloughed employees? [New 03/26/2020]

A: There is no one size-fits-all best practice for placing employees on a furlough. ADP recommends that our clients consult with experienced benefit counsel to review.

Q: Can I allow my terminated employees to stay enrolled in medical benefits but terminate dental and vision? [New 03/26/2020]

A: Employers who sponsor group health plans must follow the eligibility terms of their plan. We recommend that clients consult with experienced benefits counsel to review their plan provisions before making decisions regarding continuation of benefits for termed employees. Termination (for reasons other than gross misconduct) whether voluntary or involuntary, is still considered a qualifying event under COBRA. Employers may choose to subsidize COBRA premiums for qualified beneficiaries but should ensure that any subsidy is applied in a non-discriminatory manner.

Clients with fully-insured plans should consult their contract with their benefit carriers before making decisions with respect to continuation of coverage for terminated employees. And clients with self-insured plans should consult with any applicable stop-loss coverage carriers as well.

Q: Do the same rules apply under COBRA for employees who are laid off as a result of COVID-19? [New 03/26/2020]

A: If an employer is subject to COBRA and an employee experiences a loss of coverage due to a COBRA qualifying event, such as termination (other than for gross misconduct) or reduction in hours (even if hours are reduced to zero), then the employer has an obligation to offer continuation coverage to the former employee and any other qualifying beneficiaries on the same terms and conditions as a similarly situation non-COBRA participant.

The Families First Coronavirus Response Act of 2020 did not affect these COBRA obligations.

Q: What are the rules with respect to continuing benefits for employees who are on FMLA leave? [New 03/26/2020]

Always Designing for People™

A: While it does not amend COBRA, the FMLA contains its own continuation coverage rules. These rules require a covered employer to maintain group health plan benefits for an employee on FMLA leave on the same terms and conditions as if the employee had continued to work. This means, for example, that if an employer pays a portion of the group health plan premiums for active employees, then the employer must pay the same portion of the premiums for employees on FMLA leave. Generally, employees on FMLA leave must continue to pay their share (if any) of the group health plan premiums in order to retain coverage during the FMLA leave.

Q: Can I terminate benefits and offer COBRA to my employees who are moving from Full-Time to Part-Time? [New 03/26/2020]

A: A reduction in hours resulting in a loss of coverage is a Qualifying Event under COBRA. An employer should review the plan document to determine whether such a reduction in hours would result in a COBRA Qualifying Event.

Q: Can I terminate benefits for employees in a Stability Period under the Look Back Measurement Method under the ACA? [New 03/26/2020]

A: Employers who tie eligibility for medical benefits to an employee's full-time status under the ACA using the Lookback Measurement method need to consider the following regarding when and whether to terminate benefits and offer COBRA. Under the look-back measurement method, full-time employee status in a stability period is based on the hours of service in the prior applicable measurement period, regardless of whether the employee experiences a change in employment status either during the measurement period or during the stability period. If eligibility under the plan rules is tied to an employee's full-time status under the ACA, the employee should continue to be eligible for benefits through the end of the stability period regardless of a reduction in hours. Employers may be subject to penalties for terminating benefits for full-time employees while they are in a stability period.

> NOTE: There is a special rule that allows employers to apply the monthly measurement method to such an employee within three months of the change if the employee actually averages less than 30 hours of service per week for each of the three months following the change in employment status and if the employer has offered the employee continues coverage that provides Minimum Value from at least the fourth month of the employee's employment.
>
> For employers who determine the affordability of their plans using the W-2 safe harbor calculation method, additional considerations should be made as employers cannot include income the employee would have earned had it not been for a reduction in hours/leave of absence.

Q: I have newly hired employees who have contracted COVID-19 in the workplace, and I want to waive the new hire waiting period to make them eligible for medical benefits effective immediately. Can I do this? [New 03/26/2020]

A: ADP recommends that our clients consult with experienced benefits counsel with respect to how to amend their plan terms.

Q: Our medical coverage currently ends as of the date of termination and we would like to change our plan rules so that coverage will extend through the end of the month of termination. Are we allowed to do that? [New 03/26/2020]

A: ADP recommends that our clients consult with experienced benefits counsel with respect to how to amend their plan terms. Generally, changes to group health plans must be made on a prospective basis. In addition, clients should discuss the change with their carriers to ensure a change in coverage termination rules would be permitted by the carrier.

The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") General Questions [New 3/30/2020]

Q: What is the CARES Act? [New 03/30/2020]

A: The CARES Act was enacted on March 27, 2020 and is the third major legislative initiative to address public health concerns and economic distress associated with COVID-19. The CARES Act is the largest economic stimulus bill in American history and provides relief to individuals and businesses across the United States.

Q: What does the CARES Act cover in general? [New 03/30/2020]

A: The CARES Act provides direct financial aid to Americans in the form of $1,200 checks for individuals earning less than $75,000 ($2,400 for married households earning less than $150,000) with an additional $500 per child. The CARES Act additionally provides expanded unemployment insurance, distribution options from certain retirement plans, financial support for state and local governments, a loan program for small businesses and not-for-profits, tax credits and a payroll tax deferral for employers, and financial assistance to certain industries.

Always Designing for People™

It is divided into the following sections:

A. Division A - Keeping Workers Paid and Employed, Health Care System Enhancements, and Economic Stabilization
    a. Title 1 - Keeping American Workers Paid and Employed Act, which includes paycheck protections and a loan forgiveness program.
    b. Title II - Assistance for American Workers, Families, and Businesses, which includes enhanced unemployment benefits, grants for short-term compensation programs, and a delay of employer payroll taxes.
    c. Title III - Supporting America's Health Care System in the Fight Against the Coronavirus, which includes several health care initiatives, temporary relief for federal student loan borrowers, and expanded paid leave provisions.
    d. Title IV - Economic Stabilization and Assistance to Severely Distressed Sectors of the United States Economy, which includes mortgage and eviction relief, an increase to materials necessary for national security, and relief to aviation workers.
    e. Title V - Coronavirus Relief Funds
    f. Title VI - Miscellaneous Provisions
B. Division B - Emergency Appropriations for Coronavirus Health Response and Agency Operations

This FAQ document addresses some of the health, leave, and retirement provisions of the CARES Act.

Health Provisions [New 03/30/2020]

Q: What impact does the CARES Act have on cost sharing for COVID-19 testing? [New 03/30/2020]

A: The Families First Coronavirus Response Act ("FFCRA"), which was enacted on March 18, 2020, requires group health plans and health insurance issuers of group and individual health insurance coverage to cover FDA-approved diagnostic tests for COVID-19 without cost-sharing.

Always Designing for People™

See here. The CARES Act expands the type of tests that need to be covered to include certain tests that have not yet been approved by the FDA.

Q: Does the CARES Act address pricing for COVID-19 tests? [New 03/30/2020]

A: Yes. As stated above, FFCRA requires group health plans and health insurance issuers to cover COVID-19 testing and certain items and services without cost-sharing. Under the CARES Act, health plans and health insurance issuers must reimburse health providers that administer COVID-19 tests at the same rate as previously negotiated before the emergency declaration by HHS for the duration of the declared emergency. If a plan or issuer did not have an existing, negotiated rate with a provider before the emergency declaration, the plan or issuer must pay the provider's cash price for the test as listed by the provider on a public website or may negotiate a lower rate.

Q: Will health plans be required to cover vaccines and other preventive measures once they are available? [New 03/30/2020]

A: Yes. The CARES Act requires group health plans and health insurance issuers to cover without cost-sharing COVID-19 preventive services. Preventive services that must be covered are COVID-19 related items, services, or immunizations that have a rating of "A" or "B" in the recommendation of the United States Preventive Services Task Force ("USPSTF") or that are recommended by the Centers for Disease Control and Prevention. This requirement takes effect 15 business days after the date the recommendation is made. This 15-day period is significantly shorter period than under the Affordable Care Act ("ACA") preventive services requirement, which generally makes preventive services recommendations effective beginning the year following the year in which the recommendation was made.

Q: Can individuals with high deductible health plans ("HDHPs") receive coverage for telehealth services before meeting their annual deductible? [New 03/30/2020]

A: Yes. Though HDHPs generally cannot provide any benefits in a given plan year until the deductible for that year is satisfied, the CARES Act creates a safe harbor that allows HDHPs to cover "telehealth and remote care services" before the minimum deductible is satisfied. This provision is effective on March 27, 2020 for plan years beginning on or before December 31, 2021.

Always Designing for People™

Q: Can individuals use health spending and reimbursement accounts, such as Flexible Spending Accounts ("FSAs"), Health Savings Accounts ("HSAs"), and Health Reimbursement Accounts ("HRAs"), to pay for over-the-counter medical expenses without a prescription? [New 03/30/2020]

A: Yes. The CARES Act allows individuals to use HSA, FSA, HRA, and Archer Medical Savings Account dollars on over-the-counter drugs without a prescription and on menstrual care products. Under the ACA, drugs are not treated as "qualified medical expenses" unless they are prescribed or insulin. The CARES Act permanently reverses that rule for all expenses incurred after December 31, 2019.

Q: How does the CARES Act affect existing health information privacy protections? [New 03/30/2020]

A: The CARES Act conforms privacy rules that only apply to substance use disorder ("SUD") with the more widely applicable HIPAA privacy rules. The SUD rules apply to certain health care providers who treat substance use disorders and require a provider to obtain a patient's consent to disclose SUD information, including the fact that a patient was treated, even to another health care provider or health plan or insurer. Since the SUD rules are stricter than the HIPAA privacy rules, a health plan or health care provider that receives SUD information has to track this information separately and apply two sets of privacy rules.

The CARES Act:

- allows a SUD provider to obtain a single consent for future disclosures for treatment, payment, or health care operations, until revoked by the patient;
- allows a HIPAA covered entity or business associate to further disclose SUD information as otherwise permitted by HIPAA;
- adopts HIPAA's definitions for treatment, payment, and health care operations; and
- adds a number of HIPAA provisions to the SUD rules, including the HIPAA breach rules, the notice of privacy practices, and HIPAA's civil and criminal penalties.

Always Designing for People™

These changes take effect for uses and disclosures 12 months after the date of enactment. The CARES Act also provides that the Secretary of Health and Human Services ("HHS") must issue guidance regarding the sharing of patients' protected health information during the COVID-19 public health emergency.

Paid Leave Provisions [New 03/30/2020]

Q: How does the CARES Act change the paid leave provisions under the FFCRA? [New 03/30/2020]

A: FFCRA mandated that employers with less than 500 employees provide paid leave under the *Emergency Paid Sick Leave Act* ("Emergency Paid Sick Leave") and under amendments to the *Family and Medical Leave Act* ("Expanded FMLA Leave"). The CARES Act clarifies that an employer's requirement to provide Emergency Paid Sick Leave does not exceed (a) $511 per employee per day and $5,110 per employee in the aggregate for an employee to care for himself or herself or (b) $200 per employee per day and $2,000 per employee in the aggregate for leave related to caring for other individuals. It also clarifies that an employer's requirement to provide paid leave under the Expanded FMLA Leave provision does not exceed $200 per employee per day for leave related to the employee and $10,000 per employee in the aggregate. These limitations were contained in the FFCRA, but the CARES Act clarifies that the aggregate limits apply on a per employee basis.

Q: Do the new paid leave provisions help employees who were temporarily laid off and then rehired? [New 03/30/2020]

A: Under the FFCRA, employees who have been employed by the employer for at least 30 calendar days are eligible for Expanded FMLA Leave. The CARES Act amends this rule to extend paid leave to employees who (1) were laid off on or after March 1, 2020, (2) had worked for the employer for at least 30 of the last 60 days prior to their layoff, and (3) were rehired by the employer.

Q: In what ways does the CARES Act expand the payroll credit provisions under FFCRA? [New 03/30/2020]

Always Designing for People™

A: The FFCRA allows an employer to claim a refundable tax credit for Emergency Paid Sick Leave and Expanded FMLA Leave that the employer is required to provide. The CARES Act expands those provisions by:

- providing for an advance of the payroll tax credit, subject to the limits imposed by the FFCRA and calculated through the end of the most recent payroll period in the quarter;
- requiring the Secretary of the Treasury to prescribe forms and instructions necessary to permit the advancement of the credit; and
- requiring the Secretary of the Treasury to waive penalties associated with the failure to deposit certain employment taxes if the failure was due to an employer's anticipation of the credit.

Retirement and Compensation Provisions [New 03/30/2020]

Q: Does the CARES Act allow individuals to take increased loans or temporary withdrawals from retirement plans? [New 03/30/2020]

A: Yes. The CARES Act allows participants to take increased loans and temporary withdrawals from their retirement accounts to assist with financial distress related to COVID-19. The CARES Act calls these "coronavirus-related distributions."

Q: What qualifies as a "coronavirus-related distribution"? [New 03/30/2020]

A: A coronavirus-related distribution is made to an individual:

(1) who was diagnosed with SARS-CoV-2 or COVID-19 by a test approved by the CDC;
(2) whose spouse or dependent is so diagnosed; or
(3) who experienced adverse financial consequences as a result of being quarantined, furloughed, laid off, subject to reduced hours due to the virus (this also applies to individuals whose business was closed or subject to a reduced hours schedule due to the virus), unable to work because of a lack of child care due to the virus, or other factors determined by the Secretary of the Treasury.

Coronavirus-related distributions are permitted between January 1 and December 31, 2020.

Q: How can plan administrators verify that the request qualifies as a "coronavirus-related distribution"? [New 03/30/2020]

Always Designing for People™

A: Plan administrators can rely on the employee's 'self-certification' that they meet any of the requirements outlined above.

Q: Is there a dollar limit on temporary withdrawals under the CARES Act? [New 03/30/2020]

A: Under the CARES Act, participants can take a coronavirus-related distribution of up to $100,000 from their retirement accounts without incurring a 10% early distribution tax. Coronavirus-related distributions can be taxed over three years with an ability to be repaid within three years. Such distributions are also exempt from standard tax withholding and notice requirements.

Q: What are the rules under the CARES Act for taking loans from qualified retirement accounts? [New 03/30/2020]

A: The CARES Act allows qualified individuals (those who would qualify for a coronavirus-related distribution as outlined above) to borrow an increased amount up to the lesser of $100,000 or 100% of their account balance. Participants can normally only borrow the lesser of $50,000 or 50% of their account balance. The increased loans are permitted through September 25, 2020. The CARES Act also provides an optional 12-month delay on any repayments coming due now through the end of 2020.

Q: Do plan sponsors have to adopt these provisions? [New 03/30/2020]

A: These provisions are optional but would require a plan amendment no earlier than the end of the 2022 plan year.

Q: Does the CARES Act waive 2020 required minimum distributions ("RMDs")? [New 03/30/2020]

A: To address concerns regarding market volatility, the CARES Act provides a waiver of 2020 RMDs for defined contribution retirement plans and IRAs. This includes 2020 RMD payments for individuals who are already receiving them (*i.e.*, attained 70 ½ before 2019) and individuals who have a required beginning date in 2020.

Q: How does the CARES Act change the Department of Labor's authority to postpone certain ERISA-imposed deadlines? [New 03/30/2020]

Always Designing for People™

A: The Act amends Section 518 of ERISA by adding "a public health emergency" declared by the HHS Secretary to permit the Labor Secretary to provide an extension of up to one year for actions required or permitted to be completed under ERISA.

Q. How does the CARES Act affect single-employer pension plan contributions for 2020? [New 03/30/2020]

A: The CARES Act provides that single-employer pension plan contributions that would otherwise be due during calendar year 2020 are instead due on January 1, 2021. This provision applies to both quarterly contributions and the final contribution necessary to satisfy the annual minimum funding requirements if the contribution is due to be paid in 2020.

For a calendar plan year, the following revised contribution schedule applies:

Contribution	Prior Deadline	New Deadline
First Quarterly Contribution for 2020 Plan Year	April 15, 2020	January 1, 2021
Second Quarterly Contribution for 2020 Plan Year	July 15, 2020	January 1, 2021
Final Contribution for 2019 Plan Year	September 15, 2020	January 1, 2021
Third Quarterly Contribution for 2020 Plan Year	October 15, 2020	January 1, 2021

Although the contributions will not be due until January 1, 2021, they will still accrue interest starting on the prior deadline. The interest charged would be at the plan's effective rate of interest, which is generally calculated each year by the actuary based on the interest rates used to determine the plan's liabilities.

Additionally, for plan years that include any portion of 2020, the plan sponsor is permitted to elect to treat the plan's adjusted funding target attainment percentage as being equal to the percentage from the last plan year ending before January 1, 2020.

Tax Provisions [New 03/30/2020]

Q: Does the CARES Act provide a tax-advantaged way for employers to pay amounts toward employee student loans? [New 03/30/2020]

A: The CARES Act expands Code Section 127 to allow employers to contribute up to $5,250 toward employees' "qualified education loans." The provision allows the employer to make such payment either to the employee or to the lender. The provision is only effective for employer payments made after March 27, 2020 through December 31, 2020.

Q: Does the CARES Act provide any type of deferral for employer payroll taxes? [New 03/30/2020]

A: Yes. The CARES Act permits employers to defer payment of the employer share of the Social Security Tax, beginning after the effective date of the Cares Act through December 31, 2020. The deferred tax amounts would be paid over two years, in equal amounts due on December 31, 2021 and December 31, 2022.

Q: Does the CARES Act provide any type of tax credit for business closures due to COVID-19? [New 03/30/2020]

A: Yes. Private-sector employers are allowed a refundable tax credit against employer Social Security tax equal to 50 percent of wages paid by employers to employees during the COVID-19 crisis, up to $10,000 per employee. The credit is available to employers whose operation is fully or partially suspended due to orders from a governmental authority limiting commerce, travel, or meetings due to COVID-19, or who experienced a 50 percent decline in gross receipts when compared to the same quarter of the prior year. The credit may be increased by the proportionate share of the employer's health costs related to such wages.

- For employers with more than 100 full-time employees (as defined under the Affordable Care Act Section 4980H), this credit is available for wages paid to employees that provided no services during the shutdown.
- For employers with less than 100 full-time employees, all wages qualify for the credit, without regard to whether the employer was in operation.

Aggregation rules will apply in determining the number of employees of the employer. Wages paid may not exceed the amount such employee would have been paid for working an equivalent duration during the 30 days immediately preceding such period. Wages also do not include paid family and/or sick leave under the Families First Coronavirus Response Act for which a credit is taken. This section applies to wages paid after March 12, 2020, and before January 1, 2021.

Unemployment Insurance Provisions [New 03/30/2020]

Q: Does the CARES Act makes any changes to individuals who are eligible for unemployment assistance? [New 03/30/2020]

Always Designing for People™

A: Yes. The Pandemic Unemployment Assistance Programs provides that individuals who are not otherwise eligible for unemployment benefits under state or federal laws (such as self-employed worked, part-time workers and those with limited work histories) who are unable to work as a direct result of COVID-19 are eligible for temporary unemployment benefit assistance during their period of unemployment ending on or before December 31, 2020.

Q: Does the CARES Act enhance unemployment assistance for eligible individuals? [New 03/30/2020]

A: Yes. The CARES Act enhances unemployment assistance for all eligible individuals including: (1) $600 per week (in addition to their regular state unemployment benefits); (2) an additional 13 weeks of federally-funded unemployment benefits (extending the 26 weeks available under most state unemployment laws) to individuals who have exhausted all rights to unemployment benefits under state and federal law for that benefit year, are not otherwise receiving unemployment compensation under any state, federal, or Canadian law and able to, and actively seeking, work; and (3) the elimination of the usual one-week waiting period.