

Safeguard Employee Benefits Advisory

COVID-19 – What you need to know now

What are the Key Takeaways from the *Emergency and Family Medical Leave Act & Emergency Paid Sick Act* as it relates to Employer credits and Paid Leave for workers?

Paid Sick Leave for Workers

- For COVID-19 related reasons, employees receive up to 80 hours of paid sick leave and expanded paid child-care leave when employees' children's schools are closed or child care providers are unavailable.

Emergency and Family Medical Leave

- Temporary expansion of FMLAs 12-week job-protected leave. The Act provides up to 12 weeks of paid leave at no less than two-thirds of the employee's regular rate of pay for the number of hours the employee would have been normally scheduled to work. Pay is capped at \$200 per day and \$10,000 in the aggregate per person.

Complete Coverage

- Employers may receive 100% reimbursement for paid leave under the Act.
- Health insurance costs are also included in the credit.
- Employers face no payroll tax liability.
- Self-employed individuals may receive an equivalent credit.

Fast Funds

- Reimbursement is intended to be quick and easy to obtain.
- An immediate dollar-for-dollar tax offset against payroll taxes will be provided.
- Where a refund is owed, the IRS intends to send the refund as quickly as possible.

Small Business Protection

- Employers with fewer than 50 employees may be eligible for an exemption from the requirements to provide leave to care for a child whose school is closed, or because child-care is unavailable in cases, if viability of their business is threatened.

Easing Compliance

- Requirements subject to 30-day non-enforcement period for good faith compliance efforts.
- To take immediate advantage of the paid leave credits, businesses can retain and access funds that they would otherwise pay to the 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 (which is expected to be released this week).

For more information, please visit our Safeguard COVID-19 Resource Library, where you will find a more detailed bulletin containing specific examples of credits: [safeguardgroup.com/coronavirus](https://www.safeguardgroup.com/coronavirus)

Are Insurance carriers covering the cost of *COVID-19* testing and treatment?

This depends. Several health insurance carriers of fully-insured plans, including Blue Cross, Anthem, Cigna, Humana, and Aetna, are waiving member cost sharing (e.g., copays, coinsurance, etc.) for COVID-19 testing and will cover the cost of treatment for the novel coronavirus. Employers should contact their broker or respective insurance carriers. Self-funded plans may direct their TPA or carrier to similarly waive member cost sharing – we are aware that Veris and Pareto have waived these costs. Medicare and Medicaid will also cover costs without copays. Many carriers have also released statements that there will not be surprise billing for costs associated with COVID-19. Several insurers have webpages with additional information including FAQs that employers can share with employees. For additional details, visit our resource library where you will find links to carriers who have made announcements: safeguardgroup.com/coronavirus.

Will health insurance providers cover the cost of the *COVID-19* vaccine when it is made available?

Vaccines are an essential and highly effective way to prevent infectious disease in large populations. Unfortunately, a vaccine for COVID-19 is not yet available.

Health insurance providers cover vaccines recommended by CDC's Advisory Committee on Immunization Practices (ACIP). At this time, ACIP has not provided guidance on a future vaccine for COVID-19. If and when ACIP recommends a vaccine, it will be covered similar to other vaccines.

What are you seeing Health Insurers doing in response to the *COVID-19* crisis, and how are they handling furloughed employees?

While each carrier is responding differently, and we encourage you to check with your Safeguard employee benefits representative or go directly to your insurers dedicated COVID resource page, we do see some common threads emerging as part of their response:

- Carriers making employee eligibility exceptions for furloughed, temporarily laid-off employees, or reduced hour employees – ***please see our [resource page](#) for info pertaining to this exception.***
- Carriers eliminating prior authorization requirements for medically necessary diagnostic tests and covered services related to COVID-19 diagnosis.
- Carriers waiving early medication refill limits on 30-day maintenance medications.
- Carriers working with pharmacy partners to provide free delivery of medications and assist with mailing prescriptions.
- Carriers waiving cost sharing (copays, coinsurance, and deductibles) for in-network or out-of-network visits to a provider's office, lab fees, or treatments related to COVID-19. Some carriers warn of waiving out-of-pocket costs; however, members may experience balance billing from out-of-network providers.
- Carriers encouraging the use of 24/7 nurse phone line to virtually access clinical resources trained in the latest screening and testing referral protocols, at no cost to our members.
- Carriers encouraging the use of telemedicine and virtual sites of care.

Employee Leaves of Absence

If a business encounters a furlough or layoff due to *COVID-19*, are employees able to receive unemployment compensation?

Unemployment eligibility is determined by specific states under individualized statutory and regulatory frameworks. On March 12, the [Department of Labor \(DOL\) issued new guidance](#) encouraging states to amend their unemployment laws to provide greater flexibility for unemployment arising from coronavirus. Federal law does not require employees to resign employment in order to receive benefits due to the impact of COVID-19. Pennsylvania, for example, is providing greater flexibility by eliminating their “wait week”, which required a laid-off employee to delay their filing until a week has passed from their date of unemployment.

Federal law allows states to pay benefits where:

1. An employer temporarily ceases operations due to COVID-19, preventing employees from coming to work.
2. An individual is quarantined with the expectation of returning to work after the quarantine is over.
3. An individual leaves employment due to a risk of exposure or infection or to care for a family member.

We are encouraging employees to apply for unemployment benefits in the occasion of a furlough or layoff due to COVID-19 given these developments.

Who does the *Family and Medical Leave Act (FMLA)* apply to?

In order to qualify for FMLA, an employer must have 50 or more employees within a 75-mile radius, who work each working day during 20 or more calendar workweeks in the current or preceding calendar year. An employee must be employed with the company for a year and have worked 1250 hours in the previous 12 months to be eligible.

What are the Employee Leave Requirements under *FMLA*?

If an employee or an employee’s family member contracts COVID-19, the employee may be entitled to time off from work under federal or state leave laws. For example, an employee who is experiencing a serious health condition or who requires time to care for a family member with such a condition may be entitled to take leave under the Family and Medical Leave Act (FMLA). An illness like COVID-19 may qualify as a serious health condition under the FMLA if it involves inpatient care or continuing treatment by a health care provider. Employees may also be entitled to FMLA leave when taking time off for medical examinations to determine whether a serious health condition exists.

What does the *Emergency and Family Medical Leave Act* do to the *FMLA* program?

Temporary expansion of FMLAs 12-week job-protected leave. The Secretary of Labor may adopt regulations to exclude health care providers and emergency responders and exempt business with fewer than 50 employees if leave would jeopardize the viability of the business. Any employee that has worked for the employer for at least 30 days is eligible. The Act sunsets on December 31, 2020.

- The first 10 days of leave the employee may be unpaid, but the employee may choose to use accrued vacation leave, personal leave, or other medical or sick leave during that time. Although, the employer cannot compel an employee to use their accrued paid leave.
- Following that 10-day period, employers must provide paid leave at no less than two-thirds of the employee's regular rate of pay for the number of hours the employee would have been normally scheduled to work.
- Part-time employees' rate of pay is based on the average number of hours worked in the prior six months. In the case where the employee worked less than six months, the pay is based on 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.
- Pay is capped at \$200 per day and \$10,000 in the aggregate per person.

Reasons for Leave:

- Employee is unable to work or telework due to the need to provide care for a son or daughter (under 18 years old) if the child's school or place of child care has been closed or is unavailable due to coronavirus.

What does the *Emergency Paid Sick Act* do to the current *FMLA* program?

Employers must provide paid sick time to the extent the employee is unable to work or telework due to specified COVID-19 related reasons. The Secretary of Labor may adopt regulations to exclude health care providers and emergency responders and exempt business with fewer than 50 employees if leave would jeopardize the viability of the business. All employees of the covered employer are eligible. The Act sunsets on December 31, 2020.

Affected full-time employees are entitled to:

- 80 hours of paid sick time. Part-time employees are provided paid sick leave equal to the number of hours that they worked on average over a two-week period.
- Employees that worked for less than six months will receive paid sick leave based on 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.
- Within 15 days after the enactment of the Act, the Secretary of Labor will issue guidelines assisting employers in calculating the amount of paid sick leave.
- Leave to care for oneself provides employees with their regular rate of pay, or the minimum wage rate per FLSA, or the minimum wage rate in effect for the employee in the applicable State or locality whichever is greater subject to a \$511 per day cap and \$5,110 in the aggregate.
- However, when caring for someone else, sick leave is paid at two-thirds the employee's regular rate or minimum wage rate capped at \$200 per day and \$2,000 in the aggregate per person.

Reasons for Leave -employee is unable to work (or telework) due to:

- the employee is subject to a Federal, State or local quarantine order related to COVID-19;
- being told by a doctor to self-quarantine because of COVID-19;
- the employee is experiencing symptoms of COVID-19 and seeks a medical diagnosis;
- leave to care for someone subject to a Federal, State or Local quarantine or isolation order related to COVID-19 or the individual is advised by a doctor to self-quarantine;
- care for a son or daughter whose school or place of care has been closed, or childcare provider is unavailable due to COVID-19 precautions; and/or
- the employee is experiencing any other substantially similar condition specified by HHS.

Are workers who contract *COVID-19* eligible for workers' compensation benefits?

The question of eligibility for workers' compensation benefits is state-specific. It will also be based on a number of facts and legal issues, including how the virus was contracted, how the injury or illness was sustained (including its severity), and related issues. Please contact a Safeguard representative for guidance with state-specific claims.

On March 18, 2020, President Trump signed the *Families First Coronavirus Response Act (the Act)* into law. What does it require?

The Act requires employers to provide paid leave for some employees related to the coronavirus (COVID-19) pandemic, among other measures. The leave provisions of the Act take effect no later than 15 days after it is signed by the president.

Emergency Paid Sick Leave & Emergency Family and Paid Leave:

- 1) The Act requires 80 hours of paid sick leave for government workers and employees of companies with fewer than 500 employees. Leave must be made available to workers who are symptomatic or are under an order or advice to quarantine or self-isolate, who have to care for a family member under such an order or advice, or who have a child whose school or child-care provider or facility has closed or is unavailable due to the coronavirus. Future regulations may exempt small businesses with fewer than 50 employees from the paid sick leave requirement. Health care providers and emergency responders may be excluded from both types of leave benefits.
- 2) The Act provides FMLA rights for some employees of companies with fewer than 500 employees, requiring partially paid leave after 10 days when an employee is unable to work or telework due to school or child-care closures related to the coronavirus.

Has the IRS issued guidance for Employers on the new *Emergency Paid Sick Act* and are any tax credits available?

Small and midsize employers may begin using two new refundable payroll tax credits to obtain reimbursement for the costs of providing corona virus related leave to their employees, the U.S. Department of Labor (DOL) and Internal Revenue Service (IRS) announced on March 20, 2020. This relief is provided under the Families First Coronavirus Response Act (the Act), which was enacted on March 18, 2020. The Act

provides funds for employers with fewer than 500 employees to provide paid leave, either for their employees' own health needs or to care for their family members. The Act aims to help employers keep workers on their payrolls while ensuring that workers are not forced to choose between their paychecks and the public health measures needed to combat the coronavirus (COVID-19).

Are Employees entitled to unemployment benefits if we conduct temporary lay offs due to a prolonged shut down?

Unemployment insurance provides benefits to eligible workers who are unemployed through no fault of their own and meet other eligibility requirements. Temporary shutdowns and/or layoffs generally meet those requirements. States have different regulations around unemployment and many are making updates to their laws, so be sure to check state guidelines. A good resource to reach your respective state agency is: <https://www.careeronestop.org/LocalHelp/UnemploymentBenefits/find-unemployment-benefits.aspx>

What is COBRA?

COBRA is a law that permits employees who have lost medical or dental coverage to continue participation in their group benefit plan(s) on a self-pay basis through their former employer. In short term situations where an employer expects to recall employees from a layoff, some companies may opt to only charge the employee share of the premium as if they were active. Please check with your COBRA administrator for more details. If you elect and pay for COBRA, the reinstatement process will begin the day after the receipt of your election form and first full payment. Coverage will be retroactively reinstated. Coverage reinstatement typically takes 5-10 business days.

- If you, as the employer, are considering subsidizing an employees' COBRA premium, once your subsidy is exhausted the COBRA employee must remain on COBRA as they will be ineligible to obtain a subsidy on the exchange and enroll in those products until the next approved Open Enrollment Period. Consult with your broker on alternate ways to help employees with premium without jeopardizing their exchange eligibility.

What are qualifying events that allow employees to change their health coverage?

Qualifying events are events that cause an individual a status change to his or her group health coverage. The type of qualifying event determines who the qualified beneficiaries are for that event and the period of time that a plan must offer continuation coverage. COBRA establishes only the minimum requirements for continuation coverage. The following are qualifying events for covered employees:

- Termination of the employee's employment for any reason other than gross misconduct or
- Reduction in the number of hours of employment