



# Human Capital Management Services



# Coronavirus (COVID-19)

March 25, 2020



# Coronavirus (COVID-19)

Handling epidemics/pandemics

Remote Employees

Families First Coronavirus Response Act

Health and Welfare Benefits



# Definitions

An **infectious or communicable disease** is a disorder that is caused by bacteria, viruses or other organisms that impairs a person health and can be spread from person to person either directly or indirectly.

- Coronavirus (COVID-19)
- Influenza
- Bloodborne Pathogens
- Hepatitis

According to the Center for Disease Control:

- An **epidemic** is “the increase, often sudden, in the number of cases of an infectious disease above what is normally expected in that population in that area”.
- A **pandemic** is the “spread of an epidemic over several countries or continents, usually affecting a large number of people



# What we know today

## Coronavirus (COVID-19)

Respiratory disease

## U. S. Response

- Public Health Emergency (HHS 1/31)
- Pandemic (WHO 3/11)
- National Emergency (POTUS 3/13)

## Share Facts About COVID-19

Know the facts about coronavirus disease 2019 (COVID-19) and help stop the spread of rumors.

**FACT 1**

**Diseases can make anyone sick regardless of their race or ethnicity.**

People of Asian descent, including Chinese Americans, are not more likely to get COVID-19 than any other American. Help stop fear by letting people know that being of Asian descent does not increase the chance of getting or spreading COVID-19.

**FACT 2**

**Some people are at increased risk of getting COVID-19.**

People who have been in close contact with a person known to have COVID-19 or people who live in or have recently been in an area with ongoing spread are at an increased risk of exposure.

**FACT 3**

**Someone who has completed quarantine or has been released from isolation does not pose a risk of infection to other people.**

For up-to-date information, visit CDC's coronavirus disease 2019 web page.

**FACT 4**

**You can help stop COVID-19 by knowing the signs and symptoms:**

- Fever
  - Cough
  - Shortness of breath
- Seek medical advice if you
- Develop symptoms
- AND**
- Have been in close contact with a person known to have COVID-19 or if you live in or have recently been in an area with ongoing spread of COVID-19.

**FACT 5**

**There are simple things you can do to help keep yourself and others healthy.**

- Wash your hands often with soap and water for at least 20 seconds, especially after blowing your nose, coughing, or sneezing; going to the bathroom; and before eating or preparing food.
- Avoid touching your eyes, nose, and mouth with unwashed hands.
- Stay home when you are sick.
- Cover your cough or sneeze with a tissue, then throw the tissue in the trash.



CS 31546-A 03/11/2020

For more information: [www.cdc.gov/COVID19](http://www.cdc.gov/COVID19)



# An Effective Preparedness plan:

Bring together a team with members from each level of the organization to ensure that all workforce considerations are being taken into effect as well as following federal and state guidance.

## CONSIDERATIONS

- keep employees informed and safeguarded
- manage continuous business operations as well as interactions with the employees, public and the supply chain, with limited or no access to
- technology security

We've prepared a resource with Guidelines, Checklists and an Infectious and Communicable Disease Control policy template - Contact your Benefit Advisor who invited you to this webinar and ask for **BAN 139 and other COVID-19 resources**





# Keep employees informed and safeguarded

## CDC

### [Coronavirus COVID-19](#)

- Actively encourage sick employees to stay home
- Identify ways in which employees may be exposed in the workplace
- Separate employees who appear to have COVID-19 symptoms
- Educate employees how they can reduce the spread

## Federal Guidelines

- Avoid social gatherings
- Limit discretionary travel
- Work from Home whenever possible
- [Critical Infrastructure Industries](#) can maintain normal work schedule following CDC guidelines

## State guidelines (check your [State Governors office](#) for specifics)

- Curfews and stay at home orders
- Business restrictions - essential





# Americans with Disabilities Act

Employers can require:

- a doctor's note,
- a medical examination,
- or a time period during which the employee has been symptom free, before it allows the employee to return to work.

A reasonable belief needs to exist (based on objective evidence) that the employee's present medical condition would:

- impair ability of employee to perform their **essential job functions** (i.e., fundamental job duties) with or without reasonable accommodation, or,
- pose a **direct threat** (i.e., significant risk of substantial harm that cannot be reduced or eliminated by reasonable accommodation) to safety in the workplace.

<https://www.dol.gov/agencies/whd/fmla/pandemic>





# Americans with Disabilities Act

In situations in which an employee's leave is covered by the FMLA, the employer may have a uniformly-applied policy or practice that requires all similarly-situated employees to obtain and present certification from the employee's health care provider that the employee is able to resume work.

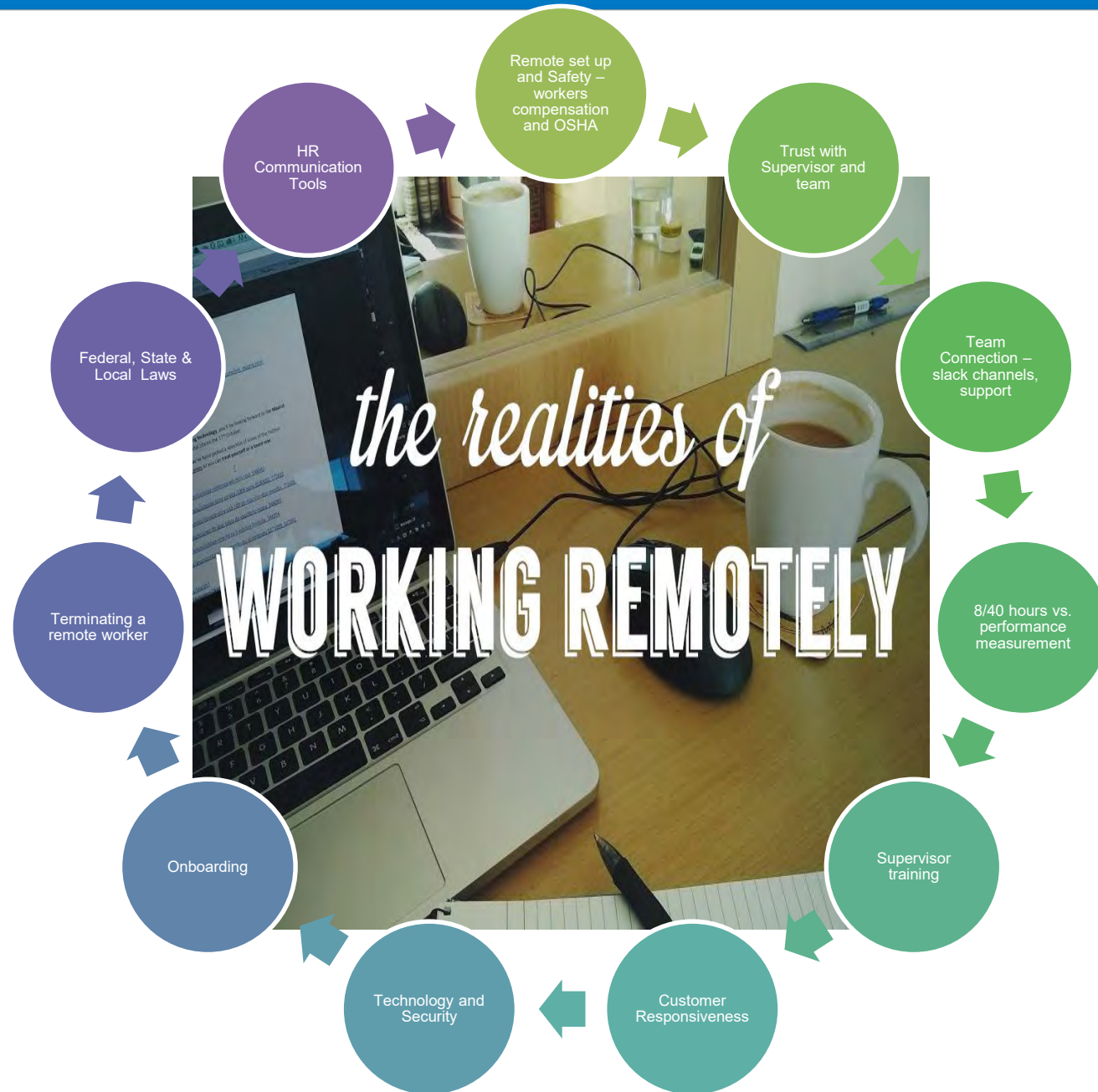
Employers are required to notify employees in advance if the employer will require a [fitness-for-duty certification](#) to return to work. If state or local law or the terms of a collective bargaining agreement govern an employee's return to work, those provisions shall be applied. Employers should be aware that fitness-for-duty certifications may be difficult to obtain during a pandemic.





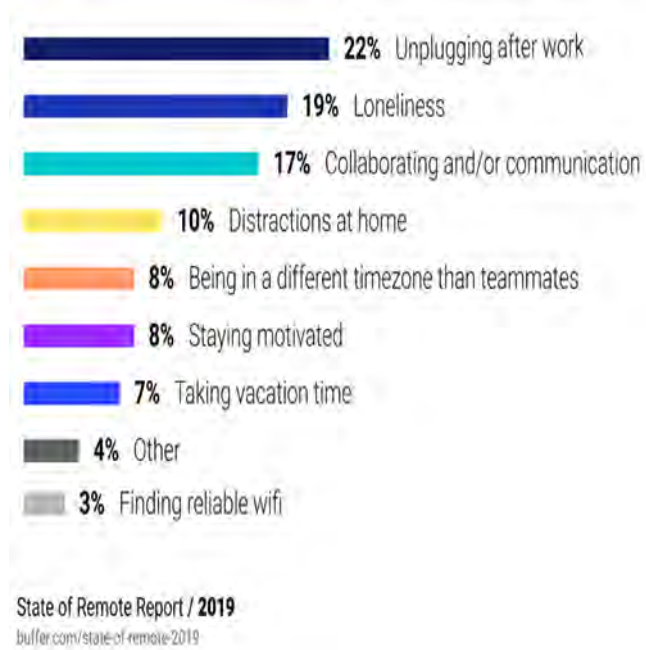
Working away from established office in same city as company headquarters

Working away from established office in different city as company headquarters





# Remote Works – Additional Considerations





# Safeguard Technology

## Consumer Identify Theft

## Business Identify Theft

**Go Digital:** Receive bank statements, credit card bills, and other financial information digitally instead of through the mail.

**Shred Documents:** Use a high-quality shredder to ensure that documents can not be restored

**Keep Records Secure:** If storing paper documents, ensure that they are in a locked filing cabinet, safe, or vault, with limited access to only those with the need to retrieve them.

**Monitor your Business Credit Report:** Just as a consumer, look for signs of unusual activity which may indicate fraud.





# Safeguard Technology

Follow Best Practices for Digital Security	
<ul style="list-style-type: none"> <li>• Implement strong firewalls</li> </ul>	<ul style="list-style-type: none"> <li>• Use a VPN for outside access</li> </ul>
<ul style="list-style-type: none"> <li>• Secure offsite data storage</li> </ul>	<ul style="list-style-type: none"> <li>• Scheduled virus and malware scans</li> </ul>
<ul style="list-style-type: none"> <li>• Automatic Windows and other software updates</li> </ul>	<ul style="list-style-type: none"> <li>• Secured wireless networks</li> </ul>
<ul style="list-style-type: none"> <li>• Limited software installation abilities for employees</li> </ul>	<ul style="list-style-type: none"> <li>• Train employees in digital security best practices</li> </ul>
<ul style="list-style-type: none"> <li>• Protect physical access to company computers</li> </ul>	<ul style="list-style-type: none"> <li>• Use strong passwords</li> </ul>
<ul style="list-style-type: none"> <li>• Limit file sharing to those employees with the need to access</li> </ul>	



# Workers' Compensation

Covered: job-related illnesses or injuries

Not Covered: Ordinary illnesses, such as the common cold and other infectious diseases

Exception: There are situations in which an ordinary illness or disease may be covered if a direct connection can be established between the office or plant and the circumstances through which the disease was contracted.

If an infected employee comes to work and subsequently infects other employees through their daily interactions at an office, the employee originally carrying the disease would not be eligible for Workers' Compensation benefits, but it could be argued that the resulting illness to other employees has been the result of an accident causing bodily injury.



# Unemployment

U. S. Department of Labor (DOL) on March 12 issued guidance permitting States “[significant flexibility](#)” in amending the guidelines for which an employee may receive benefits due to the effects of COVID-19.

UI benefits may be available for employees:

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

In addition, federal law does not require an employee to quit in order to receive benefits due to the impact of COVID-19.



# Workers Adjustment and Retraining Notification (WARN) Act

Federal – Employers with 100 or more full-time employees must provide at least 60 calendar days prior to plant closing or mass layoff (at least 50 employees)

[WARN Employers Guide](#)

State WARN Act laws have their own requirements and employers should review current status of laws.

Alabama, California, Connecticut, Georgia, Hawaii, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Tennessee, Washington, and Wisconsin.

Affected employers should consult employment counsel for guidance.





# Families First Coronavirus Response Act Leaves of Absence

Division C - Emergency Family and Medical Leave Expansion Act

Division D - Emergency Unemployment Insurance Stabilization and Access Act of 2020

Division E – Emergency Paid Sick Leave Act

Division G – Tax Credits





# Families First Coronavirus Response Act

Division C - Emergency Family and Medical Leave Expansion Act  
Public Health Emergency Leave (PHEL)

Eligible Employer (defined as having a threshold of fewer than 500 employees for the PHEL provision) make paid leave available to both full-time and part-time employees who have been employed for at least 30 calendar days by the eligible employer. A health care provider or emergency responder employer may choose to exclude an employee from this provision.



# Families First Coronavirus Response Act

Division C - Emergency Family and Medical Leave Expansion Act

Public Health Emergency Leave (PHEL)

For PHEL, an eligible employee will be able to take up to 12 weeks (as allowed under the FMLA) when they are unable to work or perform telework (working away from the employers respective worksite such as at home) for the purpose of caring for child under the age of 18 if:

- an elementary or secondary school or care center has been closed, or
- when a paid caregiver is unable to care for child due to a public health emergency.



# Families First Coronavirus Response Act

Division C - Emergency Family and Medical Leave Expansion Act  
Public Health Emergency Leave (PHEL)

The first ten 10 days of an employee's leave may be unpaid.

An employee will have the ability to substitute any available accrued paid time off (including vacation, sick, medical, personal or other accrued paid time off) that the employer provides for this unpaid time. Thereafter,

- following the first ten days an employer will provide not less than 2/3 of an employee's regular rate of pay for the number of hours they would have been scheduled to work. This amount shall not exceed \$200.00 per day for a maximum of \$10,000.00.
- For employees working variable work schedules, the employees work schedule for the preceding 6-month time (ending on the date of leave) will be used to determine an average number of hours worked for payment of leave.
- Alternatively, if no work was performed during this time the anticipated number of hours per day shall be used as calculation for payment of leave.



# Families First Coronavirus Response Act

## Division C - Emergency Family and Medical Leave Expansion Act Public Health Emergency Leave (PHEL)

Employees returning from PHEL leave are to be restored to the position they held when the leave was taken.

- Employers will be exempted from restoring an employee returning from PHEL when the employer has less than 25 employees and the position no longer exists due “economic or other changes in the operating conditions of the employer that affect employment and are caused by a public health emergency during the period of leave.” The employer though must make reasonable effort to place the employee returning from PHEL in an equivalent position “including benefits, pay and other terms and conditions of employment.”
- If the reasonable efforts of the employer fail at the time the employee is ending their FMLA under the PHEL, the employer must make reasonable efforts to contact the employee if an equivalent position becomes available within one (1) year beginning on the earlier of:
  - “(A) the date on which the qualifying need related to a public health emergency concludes; or
  - “(B) the date that is 12 weeks after the date on which the employee’s leave under section 102(a)(1)(F) commences.”





# Families First Coronavirus Response Act

## Division E - Emergency Paid Sick Leave Act

Paid sick leave to both full and part-time employees who to the extent that the employee is unable to work (or telework) due to a need for leave because:

- “(1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID–19.
- (2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID–19.
- (3) The employee is experiencing symptoms of COVID–19 and seeking a medical diagnosis.
- (4) The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).
- (5) The employee is caring for a son or daughter of such employee 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.
- (6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Except that an employer of an employee who is a health care provider or an emergency responder may exclude such an employee from application of this subsection.”





# Families First Coronavirus Response Act

## Division E - Emergency Paid Sick Leave Act

Full time employees shall receive at their regular rate of pay up to 80 hours for full-time employees. For part-time employees they shall receive at their regular rate of pay for up to an average number of hours that they work over a 2-week period of time. Employees who are receiving paid sick time under the Emergency Paid Sick Leave are not required to find a replacement to cover their shift.

This emergency paid sick leave is made immediately available for full and part-time employees regardless of how long they have worked for the covered employer. Employees are not required to use any of their accrued time paid time off, sick leave or other paid leave before receiving Emergency Paid Sick Leave.

Payment of the Emergency Paid Sick Leave ends with the employees next scheduled return to work shift immediately following the end of the need for the paid sick leave. Emergency Paid Sick Leave is not mandated to roll-over year to year.



# Families First Coronavirus Response Act

## Division E - Emergency Paid Sick Leave Act

Employers will be required to post an Emergency Paid Sick leave poster that will be provided by the Secretary of Labor where they post all other required employment related posters. retaliatory action (discipline, discharge, discriminate) may also not be taken against any employee who “takes leave in accordance with the Emergency Paid Sick Leave Act.”

Additionally, [penalties](#) will be assessed against an employer for failure to not pay minimum wage by not providing Emergency Paid Sick Leave or for unlawful retaliatory behavior in accordance with the Fair Labor Standards Act.



# Families First Coronavirus Response Act

Division D - Emergency Unemployment Insurance Stabilization and Access Act of 2020

Employers will be required to post an Emergency Paid Sick leave poster that will be provided by the Secretary of Labor where they post all other required employment related posters. retaliatory action (discipline, discharge, discriminate) may also not be taken against any employee who “takes leave in accordance with the Emergency Paid Sick Leave Act.”

[penalties](#) will be assessed against an employer for failure to not pay minimum wage by not providing Emergency Paid Sick Leave or for unlawful retaliatory behavior in accordance with the Fair Labor Standards Act.



# Coordination of Leaves



COVID-19 Scenarios	Employer Provided (Paid) Sick Leave	Short-Term Disability Plan (if available)	Family & Medical Leave Act	Families First Coronavirus Response Act: Emergency FMLA (PHEL)	Families First Coronavirus Response Act: Emergency Paid Sick Leave
Employee waiting for test results related to COVID-19	Maybe, depending on plan details	No	No	No	Up to 80 hours (prorated for part-time employees) to FFCRA maximums
Employee is mildly ill with COVID-19	Probably Yes, depending on plan details	Yes, if doctor orders to stay home from work	Yes, if doctor orders to stay home from work	No	Up to 80 hours (prorated for part-time employees) to FFCRA maximums
Employee is severely ill with COVID-19	Probably Yes, depending on plan details	Yes, if doctor orders to stay home from work	Yes, if employer is subject to FMLA and employee meets requirements	No	Up to 80 hours (prorated for part-time employees) to FFCRA maximums
Employee is caring for family member is severely ill with COVID-19	Maybe, depending on plan details	No	Yes, if employer is subject to FMLA and employee meets requirements	No	Up to 80 hours (prorated for part-time employees) to FFCRA maximums. Includes caring for an individual, not just a family member.
Employee was exposed and quarantined*; Business is open	Probably Yes, depending on plan details	No	No	No	Up to 80 hours (prorated for part-time employees) to FFCRA maximums
Employee was exposed and quarantined*; Business is closed	Probably Yes, depending on plan details	No	No	No	Up to 80 hours (prorated for part-time employees) to FFCRA maximums
Schools are closed because of COVID-19 and employee has no childcare for son or daughter	No, depending on plan details	No	No	Yes, Up to 12 weeks of leave to FFCRA maximums	Up to 80 hours (prorated for part-time employees) to FFCRA maximums
Employee has compromised immune system and is advised to self-quarantine*	Probably No	No	No	No	Up to 80 hours (prorated for part-time employees) to FFCRA maximums
Employee is afraid of gathering in a group and refuses to go to work	Probably No	No	No	No	No
Employer must shut down due to city or state requirement	Probably No	No	No	No	Up to 80 hours (prorated for part-time employees) to FFCRA maximums
Employer reduces available hours due to business slowdown	Probably No	No	No	No	No
FFCRA only applies to employers with fewer than 500 employees.				Employees eligible for Emergency FMLA within 30 days of date of hire	Employees eligible for Emergency Paid Leave on date of hire.
*quarantine advised by a healthcare provider					Alera Group Updated 3/18/2020



# Families First Coronavirus Response Act

## Division G – Tax Credits

### Tax Credit #1

Relief to employers who are now required to provide paid leave.

Emergency FMLA up to \$200 per day

Emergency Paid Sick Leave up to \$511 per day.

The credit is calculated on an individual employee basis for a total of 10 days paid leave.

Employers should maintain records:

- on employees who qualify for leave,
- the reason for the leave,
- and the days taken in order to substantiate qualifications for the credit.



# Families First Coronavirus Response Act

## Division G – Tax Credits

### Tax Credit #2

For employers who continue to provide health coverage to employees who take Emergency FMLA or Emergency Paid Sick Leave.

Employers may receive a credit for the amount paid toward maintaining the health plan, for the amounts excluded from an employee's gross income as it related to federal income tax.

This is in addition to wages paid for qualifying leave,

- cannot exceed the credit available for Emergency FMLA and Emergency Paid Sick Leave
- requested on quarterly tax returns
- It will be included in an employer's gross income



# Health & Welfare Benefit Considerations



# HDHPs and Coronavirus

- Notice 2020-15: An HDHP will not fail to be HSA-qualified merely because the plan provides benefits for testing and treatment of COVID-19 without regard to whether the minimum deductible has been satisfied
  - Applies to all medical care and items for testing and treatment of COVID-19
- All other HSA eligibility requirements are maintained at this time
- Employers sponsoring HDHPs or other health plans should determine how their insurance carrier or TPA will provide benefits for treatment of COVID-19, including whether any cost sharing will apply



# Telemedicine and Coronavirus

- IRS did not change rules to except telehealth for non-COVID-19 illnesses
  - Waiving telehealth copays for all visits may jeopardize HSA eligibility, although some insurance carriers and telehealth vendors are offering to do so for a limited duration
  - Employers with HSA plans who wish to broaden their telehealth program to include all visits at no cost should do so only for a limited duration and be aware that the IRS does not seem to be fully on board with that approach yet
  - An employer extending no-cost telehealth for all visits should consider whether to extend the same treatment for virtual behavioral health visits
- Telemedicine providers can now prescribe controlled substances in some situations/states
- Many physicians and health care systems are extending telehealth to patients
  - These may be coded the same or similar as an office visit
  - A virtual visit with a member's own primary care physician may not have the same HDHP restrictions as a telehealth visit with an external vendor



# Families First Coronavirus Response Act

- Provisions include **Emergency FMLA** and **Emergency Paid Sick Leave**
  - These provisions apply to employers with fewer than 500 employees
  - Emergency Paid Sick Leave also applies to public employers of any size
  - These provisions effective 15 days after enactment; sunset at the end of 2020
- Act includes free testing for coronavirus, increased funding for unemployment assistance, food aid, and Medicaid
- Work and work training requirements for supplemental nutrition assistance program (SNAP) suspended



# Families First Coronavirus Response Act

- Coronavirus Testing: All group health plans and health insurance issuers in the individual and group markets (including grandfathered plans) must provide COVID-19 testing with no cost-sharing or prior authorization requirements
  - Effective now through end of public health emergency as declared by HHS
  - Includes services for urgent care, emergency room, or provider visits that result in an order for or administration of a covered diagnostic test





# Benefits Issues

- If employees are laid off, review plan documents to determine if COBRA applies or if another extension of coverage is available
  - Potential ACA employer mandate exposure if employee is in a stability period
  - W-2 “Affordability” Safe Harbor may be impacted by layoffs
- Employees may seek to stop dependent care FSA elections due to school closures; such changes are permissible based on the change in provider cost (the cost is \$0 when day care is closed)



# Benefits Issues

- Check with carrier or stop loss carrier to see if they will cover employees who were furloughed or laid off
  - If they will, develop a payment system for employees
  - Pay in advance (Post tax)
  - Pay as you go (Post tax)
  - Pay upon return (Pre or post tax)
    - Provide X number of pay periods per missed premium payment
    - Unpaid premiums for employees who do not return can be treated as a debt, consult counsel



# Additional Resources

## [U. S. Government](#)

[Center for Disease Control](#) (CDC)

[Occupational Safety and Health Administration](#) (OSHA)

[Department of Labor](#) (DOL)

[DOL - Wage and Hour Division](#)

[Equal Employment Opportunity Commission](#) (EEOC)

[Internal Revenue Service](#) (IRS)

[State Unemployment Agencies](#)

[State Governor's Offices](#)



# HOW EMERGENCY PAID LEAVE (EPL) AND EMERGENCY FMLA (EFMLA) WORK TOGETHER

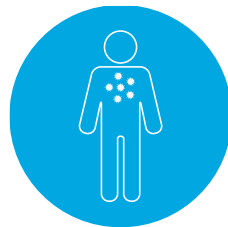
THIS ONLY APPLIES TO EMPLOYERS WITH 500 OR FEWER EMPLOYEES

Original FMLA Continues to Apply to All Public Sector Employers & Private Employers with 50+ Employees

## EMERGENCY PAID LEAVE (EPL)

### Employee Eligibility

Employee cannot work (on site or at home) because:



1) Employee has been diagnosed with COVID-19 or is under quarantine for symptoms

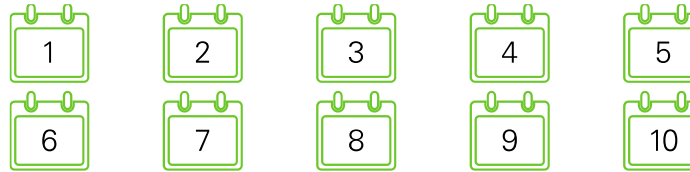


2) Employee is caring for a family member who has been diagnosed with COVID-19 or under quarantine for symptoms



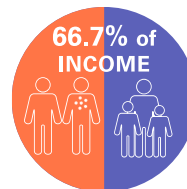
3) Employee is providing childcare for a minor whose school or daycare is closed because of COVID-19

### Employee Benefits (Maximum of 10 days)



Maximum benefit available is 80 paid hours.

100% of pre-leave income for Reason 1 to the left (Maximum of \$511 per day)



67% of pre-leave income for Reason 2 and/or Reason 3 to the left (Maximum of \$200 per day)

## EMERGENCY FMLA (EFMLA)

### Employee Eligibility

Employee has worked for 30 or more days and cannot work (onsite or at home) due to providing care for a minor whose school or daycare is closed as a result of COVID-19.



66.7% of pre-leave income (maximum of \$200/day, \$10k total maximum) from the 11th day to the end of the 12 weeks.



Job Protection for pre-leave job

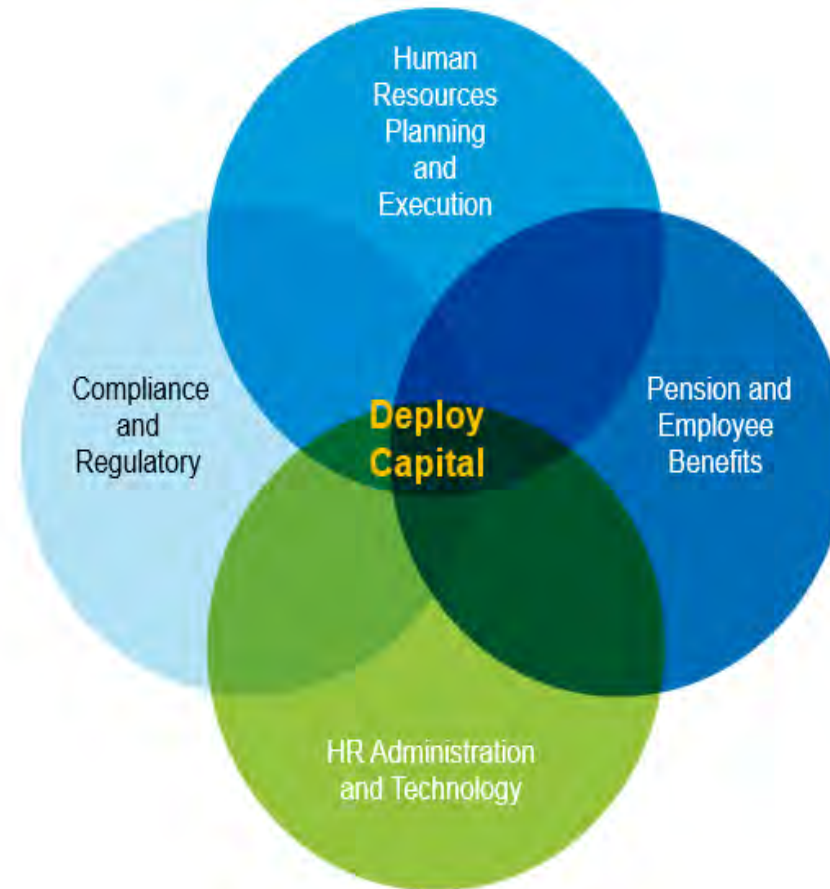


Remains of benefits for up to 12 weeks



# 2020 HR Philosophy

Stay connected





# QUESTIONS?

For more information contact

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