

BECAUSE OF
WHAT WE PROMISED,

WE CREATED THE

SIMPLIFIED
GUIDE TO
COVID-19
LEGISLATION

 Compliance
Dashboard®

(BTW, We promised
to deliver our
mission everyday. **)**



Families First Coronavirus Response Act (FFCRA) Compliance Considerations:

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18 Mandated Coverage

- All group health plans (including grandfathered) and health insurance issuers offering group or individual health insurance coverage must provide coverage for FDA-Approved COVID-19 diagnostic testing and related services without cost sharing (e.g., no deductibles, copays, coinsurance, or any other form of out-of-pocket expense).
- Coverage must include services furnished during in-person (or telehealth) health care provider office visits (traditional & nontraditional), urgent care center visits, or emergency room visits resulting in an order for, or administration of, a covered diagnostic test.
- Employees under a HDHP with an HSA do not have to meet deductible requirements.
- If leave is needed under expanded provisions, the employer may provide the first 10 days of leave unpaid, and employees may elect to substitute their accrued vacation leave, personal leave, or medical or sick leave. Note: Both the employer and employee must agree to this substitution.
- After 10 days, employers must compensate employees for the remainder of FMLA leave taken at no less than 2/3 of their regular rate of pay. However, this is subject to per-employee maximums of \$200/day and \$10,000 in the aggregate.
- Employers are provided tax credits for this expanded leave (see below.)

Effective

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1 Expanded Family Medical Leave Act (FMLA) Provisions

- **FMLA** now permits an eligible employee of an employer to take an additional 10 weeks to the standard 12 weeks of leave if an employee is unable to work (or telework) due to a need for leave to care for a minor child.
- The Act exempts small businesses with fewer than 50 employees when it would jeopardize the viability of the business as a going concern, as well as employers with less than 25 employees if certain conditions apply.

“Eligible employee”: An employee who has been employed by the employer for at least 30 days. Certain healthcare providers and emergency first responders are excluded.

“Employer”: Employers with fewer than 500 employees. Employers with fewer than 50 employees are now subject to FMLA for COVID-related absences due to the need to care for family. Schools and public agencies, regardless of size, are considered “employers” under these expanded requirements.

“Public Health Emergency”: an emergency with respect to COVID-19 as declared by a federal, state, or local authority.

Emergency Paid Sick Leave

Employers must distribute a required notice to employees:

Employee Rights Notice

- Employers with fewer than 500 employees (and public agencies, regardless of size) must make 80 hours of paid sick leave available for full-time employees who are unable to work or telework.
- Part-time employees are entitled to paid sick leave at their regular rate of pay for the average number of hours that such employees work in a two-week period.
- Employees are eligible for paid sick leave immediately upon hire.
- [Department of Labor Paid Leave Requirement Guidelines](#)
- [Department of Labor FFCRA FAQs](#)

Federal Employee Rights Notice

- Employees unable to work are eligible for emergency paid sick leave for the following reasons:

If an employee...

1. ...is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
2. ...has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. ...is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. ...is caring for an individual who is subject to an order as outlined in Item #1 or has been advised in Item #2;
5. ...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 childcare provider of such son or daughter is unavailable, due to COVID-19 precautions; or
6. ...is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of Treasury and the Secretary of Labor.



Tax Credits

Employers are entitled to a refundable tax credit equal to 100% of expanded FMLA wages paid by employers on a quarterly basis. Click here for the [IRS' FAQ](#) for small and mid-size businesses.

Employers will be entitled to a refundable tax credit equal to 100% of emergency sick-leave wages paid by employers for each calendar quarter.

- \$511 per day (\$5,110 in the aggregate), if the employee is taking paid sick time to care for themselves under paragraph (1), (2), or (3) above; or
- \$200 per day (\$2,000 in the aggregate), if the employee is taking time off to care for another under paragraph (4), (5), or (6) above.

The Coronavirus Aid, Relief, & Economic Security (CARES) Act Compliance Considerations:

1. Expansion of Coverage for COVID-19 Testing - Updates to the FFCRA

Group health plans must cover, without cost-sharing, the following diagnostic tests:

- FDA-approved tests;
- Tests for which the developer has requested or intends to request FDA emergency use authorization;
- Tests developed in and authorized by a State that has notified HHS; and
- Serological tests used to diagnose COVID-19 by detecting antibodies for the SARS-COV-2 virus.

2. Reimbursement for COVID-19 testing at a negotiated rate or cash price listed on public internet website

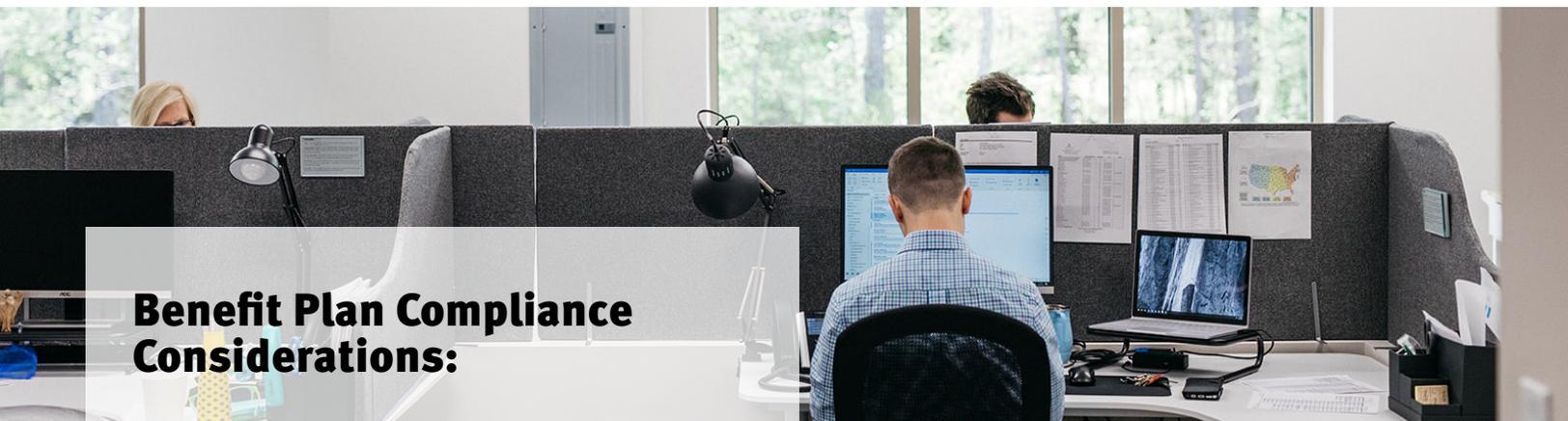
3. Coverage for Preventative Services and Vaccines for Coronavirus within 15 days

4. Confidentiality & disclosure of records relating to substance use disorder, including HIPAA updates and addition of anti-discrimination language

5. DOL's ability to postpone deadlines, e.g. extending Form 5500 filing date

6. Over-the-counter drugs and menstrual care products coverage

7. Telehealth services encouraged



Benefit Plan Compliance Considerations:

Americans with Disabilities Act (ADA)

Employers must still maintain all information about employee illness as a confidential medical record (in compliance with the ADA) but may measure employees' body temperatures and inquire if they are experiencing symptoms of COVID-19.

Cafeteria Plans

Most insurance companies are offering new special enrollment windows for [Cafeteria Plans](#).

Benefit Plan Documents

All plans must update the following documents to reflect mandatory coverage requirements.

- Summary of Material Modifications (SMM)
- Summary of Benefits and Coverage (SBC)
- Summary Plan Description (SPD)

Review [electronic disclosure rules](#) for employees working remotely.

Plans and issuers must provide notices of changes as soon as reasonable practicable

COBRA

Coverage applies to employees on furlough. Employers must be aware of when a qualifying event may occur as a result of reduction in hours.

Essential Health Benefits (EHBs)

Generally include coverage for the diagnosis and treatment of COVID-19.

Flexible Savings Accounts (FSAs)

Still only permit “qualified medical expenses”

- Rules for election changes have not been altered. Employees are not permitted to make election changes solely because they become sick or fear they may become sick with COVID-19.

Form 5500 Series

Plans with filing due dates on or after April 1, 2020, and before July 15, 2020 now have until July 15, 2020, to submit filings to the Department of Labor (DOL).

GINA

Prohibits employers from requesting genetic information in the workplace and from using such in a discriminatory manner:

- Employers may not ask employees if a family member has tested positive for COVID-19.
- If an employee volunteers family medical information, there is no GINA violation. Review electronic disclosure rules for employees working remotely.

High Deductible Health Plans (HDHPs) with Health Savings Accounts (HSAs)

May cover testing for, and treatment of, COVID-19 on a first-dollar basis.

HIPAA: Notifications of Enforcement Discretion to

- Permit uses and disclosures of Protected Health Information (PHI) by Business Associates for public health & health oversight

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activities, and

- Permit a covered health care provider to use audio or video communication technology to provide telehealth to patients

HIPAA: Privacy & Security

Privacy & security rules are still active and in place for covered entities (CE). PHI created, received, maintained, or transmitted by the health plan is still protected.

- Health information or status voluntarily disclosed by an employee is not PHI under HIPAA.
- Review HIPAA regulations regarding disclosure exceptions, including public health authorities & government agencies.
- Remember: disclosures must be the “minimum necessary” to accomplish the intended purpose.

Check out our latest blogs for HIPAA reminders during COVID-19 and review these questions to get you thinking about HIPAA in a “work-from-home” context.

Short-Term Disability

If employees don't have enough sick leave to cover days off from work due to mandatory illness or quarantine:

- Prepare a response for a request to use short-term disability.
- Review the plan's definition of “disability” and consider effects of modification of definitions on the entire workforce.
- When changing and communicating plan coverages and employer policies, use a consistent approach to reduce the likelihood of decisions seen as “discriminatory.”
- Consider expanding employer policies: emergency paid sick leave, work-from-home policies, and loan programs.

Work-From-Home Policies

- Review your company's work-from-home policy to provide as much flexibility as possible
- Update employee handbooks & distribute as soon as reasonably possible
- Communicate clearly and often with employees!

What to do now!

1. Self-Insured Plans

Add coverage requirements to your plans and ensure your TPA is paying claims accordingly.

2. Fully-Insured Plans

Communicate with your insurance carrier to learn their coverage changes.

3. HRAs and FSAs

Review your plan document to ensure it allows for the reimbursement of all IRC Section 105(b) medical expenses to reimburse OTC and menstrual care products.

4. Post the [FFCRA Model Notice](#) by April 1, 2020. See the [FAQs](#) regarding this requirement.
5. Seek professional legal or benefits counsel to address plan specific issues.
6. Review our [Geek Out!](#) page for additional information, including expanded details regarding EPSL and EFMLA.
7. Review your state in the [complete list of state-by-state](#) COVID-19 websites

When do regulatory changes apply?

“Mandated coverage” provisions of the FFCRA

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CARES Act provisions

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Remaining FFCRA provisions

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Enforcement Discretion: Business Associates & Telehealth Provisions

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to

DECEMBER

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