

Coronavirus Addendum

Employer's Guide on COV-19

COVID-19 Information



Last Updated on _____

Introduction

This document is intended to be a reference and employers guide to the COV-19 pandemic and its effects on labor laws, regulations, and policies regarding employment.

_____ will adhere to the laws, regulations, and guidance enacted within this reference to the best of the company's abilities, where applicable.

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ACA Coronavirus Guidance

The Centers for Medicare & Medicaid Services (CMS) has issued a number of frequently asked questions (FAQs) on the coronavirus (COVID-19) as it relates to various Affordable Care Act (ACA) provisions. CMS' FAQs are included below.

FAQs on Essential Health Benefit Coverage and Coronavirus

On March 12, 2020, CMS issued the following [FAQs](#) on essential health benefit (EHB) coverage and the coronavirus (COVID-19). EHB is a core set of items and services under the Affordable Care Act (ACA) that:

- Reflects the scope of benefits covered by a typical employer; and
- Covers at least 10 specified categories of items and services.

More information can be found at the following link:

- <https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/EHB-Benchmark-Coverage-of-COVID-19.pdf>

Understanding the CARES Act

The Coronavirus (COVID-19) pandemic has put a major strain on every aspect of daily life around the world, including the United States. As spread of the disease shows no sign of slowing down, there is a steadily increasing concern in the United States regarding the health and wellness of not only our citizens, but the economy as well.

In response, President Trump signed the Coronavirus Aid, Relief and Economic Security (CARES) Act into law on **March 27, 2020**. The CARES Act makes significant changes to health plans and provides \$2.2 trillion in federal funding to address the COVID-19 crisis.

Changes to Health Plans

Coverage Requirement for Coronavirus Testing

Effective **March 18, 2020**, the Families First Coronavirus Response Act (FFCRA) requires group health plans and health insurance issuers to cover COVID-19 testing without imposing any cost sharing (such as deductibles, copayments or coinsurance) or prior authorization or other medical management requirements. The CARES Act expands the FFCRA's coverage requirement for COVID-19 testing.

Coverage Mandate

This coverage mandate applies to the following health plans and issuers, regardless of grandfathered status under the Affordable Care Act (ACA):

- All fully insured group health plans
- All self-insured group health plans
- Health insurance issuers offering group or individual coverage

During the COVID-19 public health emergency, health plans and issuers must cover FDA-approved diagnostic testing products for COVID-19, including any items or services provided during a visit to a provider (in-person or telehealth), urgent care center or emergency room that relate to COVID-19 testing.

Effective **March 27, 2020**, the CARES Act expands this coverage mandate to include COVID-19 tests provided on an emergency basis, state-developed tests and any other tests approved by the U.S. Department of Health and Human Services.

This coverage cannot be subject to any plan deductible, co-payment, or coinsurance.

Guidance for HDHPs

On March 11, 2020, the Internal Revenue Service (IRS) issued Notice 2020-15 to allow high deductible health plans (HDHPs) to pay for COVID-19 testing and treatment before plan deductibles have been met, without jeopardizing their status. The IRS also noted that any COVID-19 vaccination costs count as preventive care and can be paid for by an HDHP without cost sharing.

The Coronavirus Aid, Relief and Economic Security Act (CARES Act) allows HDHPs to provide benefits for telehealth or other remote care services before plan deductibles have been met, for plan years beginning before Jan. 1, 2022.

In Notice 2020-29, the IRS clarified that these coverage changes for HDHPs may be applied retroactively to Jan. 1, 2020.

Only individuals who are covered by HDHPs can make contributions to HSAs. To qualify as an HDHP, a health plan cannot pay medical expenses (other than preventive care) until the annual minimum deductible has been reached. IRS Notice 2020-15 and the CARES Act provide exceptions to this general rule to encourage testing for and treatment of COVID-19.

More information can be found at the following link:

- <https://www.hhs.gov/coronavirus/cares-act-provider-relief-fund/for-patients/index.html>

EEOC Guidance on Coronavirus and the ADA

On Sept. 8, 2020, the Equal Employment Opportunity Commission (EEOC) issued additional answers to frequently asked questions (FAQs) about how employers should comply with the Americans with Disabilities Act (ADA) while also observing all applicable emergency workplace safety guidelines during the coronavirus pandemic. The new FAQs, which address

various issues related to employees returning to work during the pandemic, were added to guidance that the EEOC first issued on March 18, 2020, and then updated in April, May and June of 2020.

The original FAQs draw from the EEOC's existing pandemic publication, Pandemic Preparedness in the Workplace and the ADA, and the later additions are derived from COVID-19-specific questions the EEOC has received from employers about navigating workplace issues related to the coronavirus (COVID-19).

The EEOC's FAQs, updated as of Sept. 8, 2020, are provided below:

- <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eo-laws>

The Emergency Paid Sick Leave Act

In response to the coronavirus (COVID-19) pandemic, on March 18, 2020, Congress enacted a bill providing various forms of relief, including two separate laws mandating that employers give employees paid leave for specified purposes related to COVID-19. The two leave laws are the Emergency Family and Medical Leave Expansion Act, and the Emergency Paid Sick Leave Act. The leave mandates take effect no later than 15 days after passage (April 2, 2020) and sunset on Dec. 31, 2020.

Covered Employers

The Act applies to all private employers with **fewer than 500 employees**, and all government employers.

Covered Employees

All employees are covered, regardless of the length of their employment with their current employer. However, employers may choose not to provide paid sick leave to employees who are **health care providers** or **emergency responders**.

Paid Sick Leave

All full-time employees, regardless of the length of time they have worked for their employer, are entitled to **80 hours of paid sick time**, available for immediate use. Part-time employees are entitled to an amount of paid sick time equal to the average number of hours they work over a two-week period.

Paid sick time may be taken when the 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 is seeking a medical diagnosis
4. Is caring for an individual who is subject to a federal, state or local quarantine or isolation order related to COVID-19, or who has been advised by a health care provider to self-quarantine
5. Is caring for his or her child if the child's school or place of care has closed, or the child's care provider is unavailable, because of COVID-19 precautions
6. Is experiencing another substantially similar condition specified by the Secretary of Health and Human Services (HHS)

Employers may not require employees to use other paid leave before using paid leave under the new law. The law allows for future regulations exempting businesses with fewer than **50 employees** from providing leave for reason 5, above.

An employer may require an employee to follow reasonable **notice procedures** after taking leave the first time.

Compensation

Under the Act, employers must pay employees at their regular rate of pay if the employee is taking leave for a reason related to their own symptoms of COVID-19 or exposure to the illness (reasons 1-3 in the list above). Compensation for these workers is capped at **\$511** per day and **\$5,100** per month. Employees who are taking leave to care for family members (reasons 4 and 5 in the list above), and employees whose leave falls under reason 6 in the list above are only entitled to be paid at **two-thirds** of their regular rate.

EEOC Guidance on Coronavirus and the ADA

On Sept. 8, 2020, the Equal Employment Opportunity Commission (EEOC) issued additional answers to frequently asked questions (FAQs) about how employers should comply with the Americans with Disabilities Act (ADA) while also observing all applicable emergency workplace safety guidelines during the coronavirus pandemic. The new FAQs, which address various issues related to employees returning to work during the pandemic, were added to guidance that the EEOC first issued on March 18, 2020, and then updated in April, May and June of 2020.

The original FAQs draw from the EEOC's existing pandemic publication, Pandemic Preparedness in the Workplace and the ADA, and the later additions are derived from COVID-19-specific questions the EEOC has received from employers about navigating workplace issues related to the coronavirus (COVID-19).

The EEOC's FAQs, updated as of Sept. 8, 2020, are provided below.

- <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

DOL FAQs: COVID-19 and the Fair Labor Standards Act (FLSA)

In light of the spread of COVID-19 in the United States, the Department of Labor (DOL) has published answers to frequently asked questions on how employers can stay in compliance with the federal Fair Labor Standards Act (FLSA), which regulates wage and hour conditions for employees.

When responding to pandemics or other public health emergencies, employers must be aware of the effects these events can have on wages and hours worked under the FLSA. The guidance offered by these answers provides information on common issues employers may face, and will be particularly useful for those who are considering teleworking as a prevention strategy, or those dealing with personnel shortages.

Questions and answers from the Department of Labor regarding COV-19 can be found here:

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

The Emergency Family and Medical Leave Expansion Act

The Emergency Family and Medical Leave Expansion Act (the "Act") was passed by Congress on March 28, 2020. The Act amends the federal Family and Medical Leave Act (FMLA) to allow employees to take leave for certain child-care purposes related to COVID-19. It requires employers to partially compensate employees after the first 10 days of leave.

Covered Employers

The expanded FMLA requirements apply to private employers with **fewer than 500 employees**, and to all government employers. Thus, small employers that are not subject to the FMLA's regular leave provisions are subject to the new FMLA leave rules that allow employees to take leave for specified child care purposes related to COVID-19.

The law allows for future regulations to exempt businesses with fewer than 50 employees if the leave would jeopardize the viability of the business. The law states that employers with fewer than 50 employees will **not** be subject to civil damages in an employee action brought under the FMLA for violation of the new provisions.

More information on the Emergency FLMA Expansion can be found in the link below:

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

Section 125 Plans, Health FSAs and DCAPs

Mid-year Election Change Rules

On May 12, 2020, the IRS released Notice 2020-29, which provides temporary flexibility for mid-year election changes under a Section 125 cafeteria plan during calendar year 2020. The changes are designed to allow employers to respond to changes in employee needs as a result of the COVID-19 pandemic.

This guidance relates to mid-year elections for self-insured and fully insured employer-sponsored health coverage, health flexible spending arrangements (health FSAs) and dependent care assistance programs (DCAPs).

For employer-sponsored health coverage, a Section 125 cafeteria plan may permit an employee to prospectively:

- Make a new election if the employee previously declined coverage;
- Revoke an existing election and enroll in different health coverage sponsored by the employer; or
- Revoke an existing election, if the employee is or will be enrolled in other health coverage.

Employees may also prospectively revoke an election, make a new election or decrease or increase an existing election for a health FSA or DCAP. A plan may permit any of the election changes described in the notice, regardless of whether they satisfy existing mid-year election change rules.

Extended Period for Using Health FSA and DCAP Funds

Due to the COVID-19 outbreak, employees may be more likely to have unused amounts in their health FSAs or DCAPs. IRS Notice 2020-29 allows employers to permit employees to apply unused amounts remaining in a health FSA or a DCAP at the end of a plan year ending in 2020 (or a grace period ending in 2020) to pay or reimburse expenses incurred through Dec. 31, 2020. This relief applies to all health FSAs, including health FSAs that allow carryovers.

Carryover Limit

IRS Notice 2020-33 increases the health FSA carryover limit for unused funds remaining at the end of a plan year from \$500 to \$550 to reflect indexing for inflation. This change is effective for plan years beginning in 2020 (and reflects the maximum amount that may be carried over to the immediately following plan year beginning in 2021).

Section 125 Plan Amendments

Employers that implement these changes must adopt an amendment for their Section 125 cafeteria plans by Dec. 31, 2021. Employees must also be notified of the changes.

IRS Guidance on Coronavirus Tax Credits

The Coronavirus Aid, Relief and Economic Security Act (CARES Act), enacted on March 27, 2020, is designed to encourage eligible employers to keep employees on their payroll, despite experiencing economic hardship related to COVID-19, with an employee retention tax credit (Employee Retention Credit).

The Families First Coronavirus Relief Act (FFCRA) requires certain employers to pay sick or family leave wages to employees who are unable to work or telework due to certain circumstances related to COVID-19. Employers are entitled to a refundable tax credit for the required leave paid, up to specified limits.

The same wages cannot be counted for both tax credits.

The link below this section provides more information from the IRS on these tax credits.

- <https://www.irs.gov/coronavirus-tax-relief-and-economic-impact-payments>

Payroll Tax Deferment

Presidential Order

Government agencies hold employers and payroll providers responsible for withholding an adequate amount of payroll taxes from their employees' wages and compensation.

On Aug. 8, 2020, President Donald Trump ordered the U.S. Department of Treasury (the Department) to defer collecting certain payroll taxes **from Sept. 1 to Dec. 31, 2020**. Because the order is for a deferral, the unpaid taxes will need to be recouped at a later time, unless the Department can find an avenue to eliminate the obligation to pay the taxes.

Under the order, employers will be able to defer taxes that help pay for Social Security for individuals who receive **less than \$4,000 during any bi-weekly pay period** (the equivalent of \$104,000 per year) on a pre-tax basis.

Affected taxes will be deferred without any penalties, interest, additional amount or addition to the tax. The White House's position is that deferring this tax will alleviate the hardship of individuals affected by the economic consequences of the COVID-19 pandemic.

IRS Guidance

On Aug. 28, 2020, the Internal Revenue Service (IRS) issued Notice 2020-65 (the Notice) to provide guidance for affected employers. Employer participation in these deferrals is permitted, but not required.

Eligibility for Deferred Payroll Taxes

The Notice releases employers from their obligation to collect and pay payroll Social Security taxes for individuals who receive applicable wages, defined as compensation that is less than \$4,000 for a biweekly pay period, or “the equivalent threshold amount with respect to other pay periods.”

Employers must determine whether applicable wages exist every pay period **between Sept. 1 and Dec. 31, 2020**.

Recoupment of Payroll Taxes

The Notice informs employers that any taxes deferred between Sept. 1 and Dec. 31, 2020, will need to be collected and remitted to the IRS **between Jan. 1 and Apr. 30, 2021**, unless the Department can find an avenue to eliminate the obligation to pay the deferred taxes. Interest, penalties and additions to tax will begin to accrue on May 1, 2021, for any unpaid deferred taxes.

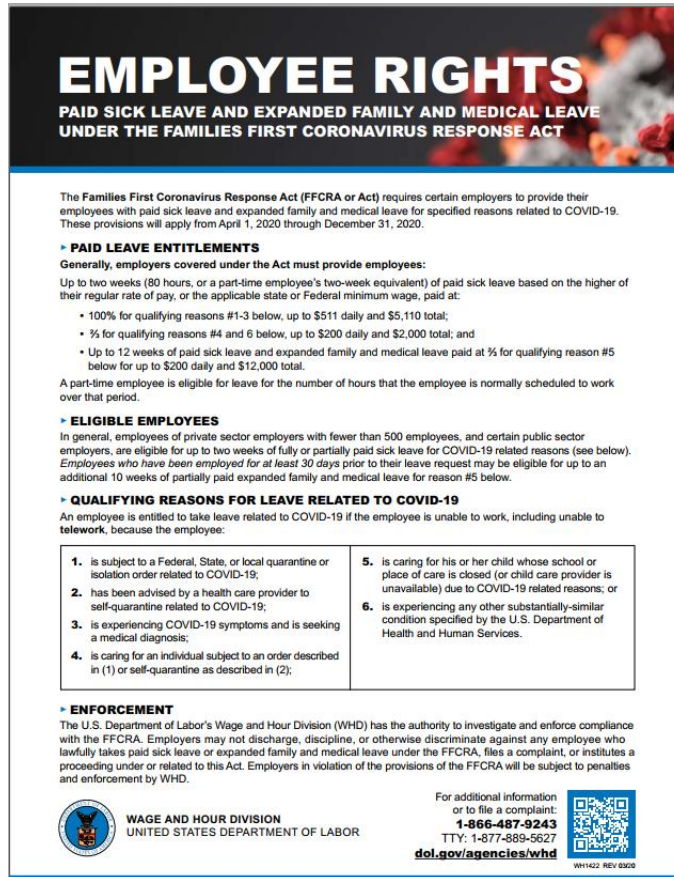
Employers will need to pay these deferred taxes in addition to collecting and remitting the taxes that regularly become due during the Jan. 1 to Apr. 30 pay period.

The Notice also explains that employers will be allowed to make arrangements with affected employees to collect deferred taxes in 2021.

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Appendix A: The Families First Coronavirus Response Act (FFCRA or Act) Labor Poster

Click the image below to download the poster:



EMPLOYEE RIGHTS
PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE
UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

► **PAID LEAVE ENTITLEMENTS**
Generally, employers covered under the Act must provide employees:
Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- ⅔ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at ⅓ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.


A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

► **ELIGIBLE EMPLOYEES**
In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.


► **QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19**
An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;	5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or
2. has been advised by a health care provider to self-quarantine related to COVID-19;	6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;	
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2).	

► **ENFORCEMENT**
The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.

 **WAGE AND HOUR DIVISION**
UNITED STATES DEPARTMENT OF LABOR

For additional information or to file a complaint:
1-866-487-9243
TTY: 1-877-889-5627
dol.gov/agencies/whd

 WH1422 REV 03/20

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Appendix B: Coronavirus Tax Relief and Economic Impact Payments

Click the image below to download the tax relief guide for small businesses:

