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# Employee Benefits & 401k Compliance During The Coronavirus Outbreak

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# FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)...EXPANSION OF FMLA AND EMERGENCY PAID SICK LEAVE

2020...

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**MOMENTS  
THAT  
MATTER.**

# Families First Coronavirus Recovery Act

House passed bill on Feb. 12<sup>th</sup>. Bill was amended/corrected in the Senate.

President signed the final bill (8 sections..2 are relevant to our work) on March 16<sup>th</sup>.

Effective Date: **April 1, 2020**

Termination Date: **December 30, 2020.**

Received FAQ Guidance on **March 24** and **26**. Still waiting for Regulations and Treasury/IRS.

Will it be extended if the Pandemic lasts longer than expected?

# Families First Coronavirus Recovery Act

The Act, among other things...

1. Provides for an Emergency Expansion of FMLA by expanding eligibility(30 days of employment) and allowing payment for a limited COVID 19 reason only.
2. Creates an Employee Paid Sick Leave.

Effective Date: April1,2020..sunsets December 31,2020.

Employers with more than 500 employees are exempt.

# Families First Coronavirus Recovery Act

## When do you count the 500?

It is not a calendar year count. The statute is silent on the issue but the March 24<sup>th</sup> FAQ guidance states that the issue of 500 employees is addressed: **“at the time leave is to be taken.”**

**Problem:** Employee headcount can vary day to day.

# FMLA...A Quick Refresher

An **employer covered** by **FMLA** is any person engaged in commerce or in any industry or activity affecting commerce, who employs **50** or more **employees** for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year.

An eligible employee must have worked **1250** hours over **12 months**.

# FMLA...A Quick Refresher

Twelve workweeks of **unpaid** leave in a 12-month period for:

- the birth of a child and to care for the newborn child within one year of birth;
- the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- to care for the employee's spouse, child, or parent who has a serious health condition;
- a serious health condition that makes the employee unable to perform the essential functions of his or her job;
- any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty;" **or**

Twenty-six workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness if the eligible employee is the service member's spouse, son, daughter, parent, or next of kin (military caregiver leave).



# 1. Emergency Expansion of FMLA

# 1. Emergency Expansion of FMLA

The Emergency Family and Medical Leave Expansion Act amends the Family Leave and Medical Leave Act by:

- 1. Expanding the pool of covered employers to those below 50 employees. There is a hardship exemption process for those with fewer than 50 employees.**
- 2. Exempting employers with 500 or more employees from complying with the emergency legislation;**
- 3. Reducing the employee eligibility requirement to 30 days of work;**
- 4. Adding a 6<sup>th</sup> reason for taking FMLA related only to COVID 19; and**
- 5. Requiring payment, from day 11 to the end of FMLA for COVID 19.**

# Emergency Expansion of FMLA

**Is all leave under the FMLA now paid leave?**

No. The only type of family and medical leave that is paid leave is expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act when such leave exceeds ten days. This includes **only leave taken because the employee must care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.**

# Emergency Expansion of FMLA

## Covered Employer

This new leave entitlement would apply to employers with **fewer than 500 employees** and it may also exclude employers with fewer than 50 employees where a hardship exemption applies.

**Eligible Employee** ...The term 'eligible employee' means an employee **who has been employed for at least 30 calendar days by the employer** with respect to whom leave is requested...

# Emergency Expansion of FMLA

How do I know whether I have “been employed for at least 30 calendar days by the employer” for purposes of expanded family and medical leave?

You are considered to have been employed by your employer for at least 30 calendar days if your employer **had you on its payroll for the 30 calendar days immediately prior to the day your leave would begin.** For example, if you want to take leave on April 1, 2020, you would need to have been on your employer’s payroll as of March 2, 2020.

If you have been working for a company as a temporary employee, and the company subsequently hires you on a full-time basis, **you may count any days you previously worked as a temporary employee toward this 30-day eligibility period.**

# Emergency Expansion of FMLA

## Counting Challenge For Related Companies With Common Ownership...Expansion of Emergency FMLA

### From the DOL:

In general, two or more entities are separate employers unless they meet the [integrated employer test](#) under the Family and Medical Leave Act of 1993 . If two entities are an integrated employer under the FMLA, then employees of all entities making up the integrated employer will be counted in determining employer coverage for purposes of expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act.

# Emergency Expansion of FMLA

29 CFR § 825.104 - Covered employer.

The FMLA Integrated Employer Test is both objective and *subjective*. *We recommend engaging employment law counsel.*

“...Where this test is met, the [employees](#) of all entities making up the integrated [employer](#) will be counted in determining [employer](#) coverage and [employee](#) eligibility. A determination of whether or not separate entities are an integrated [employer](#) ***is not determined by the application of any single criterion, but rather the entire relationship is to be reviewed in its totality.*** Factors considered in determining whether two or more entities are an integrated [employer](#) include:

- (i) Common management;
- (ii) Interrelation between operations;
- (iii) Centralized control of labor relations; and
- (iv) Degree of common ownership/financial control.”

# Emergency Expansion of FMLA ...

## New Reason For FMLA Leave...

QUALIFYING NEED RELATED TO A PUBLIC HEALTH EMERGENCY.—The term ‘qualifying need related to a public health emergency’, with respect to leave, means the employee **is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.**



# Emergency Expansion of FMLA

## **Payment due to a Public Health Emergency...The First 10 days.**

The first 10 days for which an employee takes leave under section 102(a)(1)(F) may consist of unpaid leave.

...

An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave

# Emergency Expansion of FMLA

**After 10 days...The employer shall pay the employee.**

- (I) an amount that is not less than two-thirds of an employee's regular rate of pay and by
- (II) the number of hours the employee would otherwise be normally scheduled to work.
- (III) specific formula for variable hour employee by using a 6 month look back and averaging.

**IMPORTANT:** Pay is only for the new COVID 19 Reason for Leave.

# Emergency Expansion of FMLA

**There is a cap on payments:** In no event shall such paid leave exceed **\$200 per day** and **\$10,000 in the aggregate**.

**Note: \$10,000 is 50 days, or a little over 7 weeks, at \$200 a day.**

# Emergency Expansion of FMLA

If I am home with my child because his or her school or place of care is closed, or child care provider is unavailable, do I get paid sick leave, expanded family and medical leave, or both—how do they interact?

You may be eligible for both types of leave, **but only for a total of twelve weeks of paid leave.**

You may take both paid sick leave and expanded family and medical leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons. **The Emergency Paid Sick Leave Act provides for an initial two weeks of paid leave. This period thus covers the first ten workdays of expanded family and medical leave, which are otherwise unpaid under the Emergency and Family Medical Leave Expansion Act unless the you elect to use existing vacation, personal, or medical or sick leave under your employer's policy.** After the first ten workdays have elapsed, you will receive 2/3 of your [regular rate of pay](#) for the hours you would have been scheduled to work in the subsequent ten weeks under the Emergency and Family Medical Leave Expansion Act.

Please note that you can only receive the additional ten weeks of expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act for leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

# Emergency Expansion of FMLA

**Fed. Gov't will provide tax credits to employers paying out expanded FMLA leave benefits.**

The Tax Credits: a refundable tax credit equal to 100% percent of qualified paid leave benefits paid by an employer subject to certain caps and offset against social security taxes paid by the employer.

# Emergency Expansion of FMLA

## Notice Requirement.

**EMPLOYEE MUST GIVE EMPLOYER NOTICE.**—In any case where the necessity for leave under section 102(a)(1)(F) for the purpose described in subsection (a)(2)(A)(iii) **is foreseeable, an employee shall provide the employer with such notice of leave as is practicable.**

**EMPLOYER HAS POSTER/NOTICE Requirement.** Employers must post a notice related to this section in a conspicuous place in the workplace. A model notice will be provided by the Department of Labor within 7 days of enactment of the law.

# Emergency Expansion of FMLA

## Job restoration:

**Required** for employees taking leave...

Unless the employer has 25 or fewer employees and the position held by the employee when the leave commenced does not exist due to economic conditions or other changes in operating conditions of the employer. In these circumstances, employers must first make reasonable efforts to restore the employee to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

# Emergency Expansion of FMLA

**May I take my paid sick leave or expanded family and medical leave intermittently while teleworking?** Yes, *if your employer allows it* and if you are unable to telework your normal schedule of hours due to one of the qualifying reasons in the Emergency Paid Sick Leave Act. In that situation, you and your employer may agree that you may take paid sick leave intermittently while teleworking. Similarly, if you are prevented from teleworking your normal schedule of hours because you need to care for your child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, you and your employer may agree that you can take expanded family medical leave intermittently while teleworking.

You may take intermittent leave in any increment, provided that you and your employer agree. For example, if you agree on a 90-minute increment, you could telework from 1:00 PM to 2:30 PM, take leave from 2:30 PM to 4:00 PM, and then return to teleworking.

**The Department encourages employers and employees to collaborate to achieve flexibility and meet mutual needs, and the Department is supportive of such voluntary arrangements that combine telework and intermittent leave.**

**March 26, 2020 FAQ**



# Emergency Expansion of FMLA

**May I take my expanded family and medical leave intermittently while my child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons, if I am not teleworking?** Yes, but only with your employer's permission. Intermittent expanded family and medical leave should be permitted only when you and your employer agree upon such a schedule. For example, if your employer and you agree, you may take expanded family and medical leave on Mondays, Wednesdays, and Fridays, but work Tuesdays and Thursdays, while your child is at home because your child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons, for the duration of your leave.

The Department encourages employers and employees to collaborate to achieve flexibility. Therefore, if employers and employees agree to intermittent leave on a day-by-day basis, the Department supports such voluntary arrangements.

March 26, 2020 FAQ

# Emergency Expansion of FMLA

**As an employee, may I use my employer's preexisting leave entitlements and my FFCRA paid sick leave and expanded family and medical leave concurrently for the same hours?** No. If you are eligible to take paid sick leave or expanded family and medical leave under the FFCRA, as well as paid leave that is already provided by your employer, unless your employer agrees you must choose one type of leave to take. You may not simultaneously take both, unless your employer agrees to allow you to supplement the amount you receive from paid sick leave or expanded family and medical leave under the FFCRA, up to your normal earnings, with preexisting leave. For example, if you are receiving 2/3 of your normal earnings from paid sick leave or expanded family and medical leave under the FFCRA and your employer permits, you may use your preexisting employer-provided paid leave to get the additional 1/3 of your normal earnings so that you receive your full normal earnings for each hour.

**March 26, 2020 FAQs.**

# Emergency Expansion of FMLA

**If I am an employer, may I require an employee to supplement or adjust the pay mandated under the FFCRA with paid leave that the employee may have under my paid leave policy?** No. Under the FFCRA, only the employee may decide whether to use existing paid vacation, personal, medical, or sick leave from your paid leave policy to supplement the amount your employee receives from paid sick leave or expanded family and medical leave. **The employee would have to agree to** use existing paid leave under your paid leave policy to supplement or adjust the paid leave under the FFCRA.

# Emergency Expansion of FMLA

**No Discrimination or Retaliation:** No discrimination or retaliation is permitted against employees for taking FMLA leave under the new law or for reporting complaints, testifying or instituting proceedings related to the law.

## **Penalties/Remedies:**

- A violation of the FMLA Expansion is a violation of the FMLA.
- The penalties include lost wages and benefits, other actual monetary losses, an equivalent amount as liquidated damages, and attorney's fees and costs.
- Equitable remedies such as reinstatement are also available.

## **2. Emergency Paid Sick Leave**

## 2. Emergency Paid Sick Leave

### **Which Employers Are Subject?**

Employers with fewer than 500 employees.

### **Which Employees Are Eligible?**

All employees...no work day or hours threshold.

### **How Much Paid Leave?**

**Two weeks. Can range from 1 to 80 hours.**

# Emergency Paid Sick Leave

## Counting Challenge For Related Companies With Common Ownership...Employee Paid Sick Leave

It appears that there is a required FLSA analysis in regards to whether there are 500 employees for Employee Paid Sick Leave purposes.

### From the DOL

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.

**We recommend engaging employment law counsel** since the answer may involve an analysis of FLSA concepts which falls squarely in the arena of employment wage/hour compensation law.

# Emergency Paid Sick Leave

## Six (6) Reasons Can Trigger EPSL. (\$511 per day and \$5,110)

(a) IN GENERAL.—An **employer** shall provide to each employee employed by the employer paid sick time **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.**



# Emergency Paid Sick Leave

**\$200 per day and \$2,000**

(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.

# Emergency Paid Sick Leave

(b) **DURATION OF PAID SICK TIME.**— 1 to 80 hour maximum...

(1) **IN GENERAL.**—An employee shall be entitled to paid sick time for an amount of hours determined under paragraph (2).

(2) **AMOUNT OF HOURS.**—The amount of hours of paid sick time to which an employee is entitled shall be as follows: **(A) For full-time employees, 80 hours.**

**(B) For part-time employees, a number of hours equal to the number of hours that such employee works, on average, over a 2-week period.**

(3) **CARRYOVER.**—Paid sick time ... shall not carry over from 1 year to the next.

# Emergency Paid Sick Leave

EPSL payments are calculated based on (1.) the employee's required compensation and (2.) the number of hours the employee would otherwise be normally scheduled to work ...**except that in no event shall such paid sick time exceed—**

**\$511 per day and \$5,110** in the aggregate for a use described in paragraph (1), (2), or (3) and **\$200 per day and \$2,000** in the aggregate for a use described in paragraph (4), (5), or (6) of section 5102(a).

# Emergency Paid Sick Leave

**PROHIBITION.—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.**

# Emergency Paid Sick Leave

**May I take 80 hours of paid sick leave for my self-quarantine and then another amount of paid sick leave for another reason provided under the Emergency Paid Sick Leave Act?**

No. You may take up to two weeks—or ten days—(80 hours for a full-time employee, or for a part-time employee, the number of hours equal to the average number of hours that the employee works over a typical two-week period) of paid sick leave for any combination of qualifying reasons. However, the total number of hours for which you receive paid sick leave ***is capped at 80 hours*** under the Emergency Paid Sick Leave Act.

# Emergency Paid Sick Leave

**How do I count hours worked by a part-time employee for purposes of paid sick leave or expanded family and medical leave?**

A part-time employee **is entitled to leave for his or her average number of work hours in a two-week period.** Therefore, you 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.**

# Emergency Paid Sick Leave

**When calculating pay due to employees, must overtime hours be included?**

Yes. The Emergency Family and Medical Leave Expansion Act requires you to pay an employee for hours the employee would have been normally scheduled to work even if that is more than 40 hours in a week.

However, the Emergency Paid Sick Leave Act requires that paid sick leave be paid only up to 80 hours over a two-week period. **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.

# Emergency Paid Sick Leave

**If I take paid sick leave under the Emergency Paid Sick Leave Act, does that count against other types of paid sick leave to which I am entitled under State or local law, or my employer's policy?** No. Paid sick leave under the Emergency Paid Sick Leave Act is in addition to other leave provided under Federal, State, or local law; an applicable collective bargaining agreement; or your employer's existing company policy.

March 26, 2020 FAQs



# DOL FAQ Resources

March 24 and 26, 2020

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

# **Furloughs and Group Health Plans**

# Furloughs and Group Health Plans

**Employers needing to reduce the size of their workforces in response to flagging consumer demand might want to be continue to provide group health plan (GHP) coverage to affected employees during a "furlough" period**

ERISA Requirements	Fully Insured Plans	Self-funded Plan
Plan document/Summary Plan Description establishes GHP eligibility terms and conditions; e.g., an employee must work 30 or more hours per week	<p>Dropping below 30 hours is a "reduction in hours" that results in a loss of coverage</p> <p>To continue coverage required a plan amendment and notice to the carrier; carrier consent may also be required if the change runs afoul of carrier underwriting guidelines</p>	<p>Dropping below 30 hours is a "reduction in hours" that results in a loss of coverage</p> <p>To continue coverage required a plan amendment and notice to (and consent of) the stop-loss vendor</p>

Alternative approach: treat the reduction in hours as COBRA qualifying event, a portion of which the employer can choose to subsidize

# Health Savings Accounts (HSAs), Preventive Care, Etc.

*General rule:* Employees may make and receive contributions to HSAs only if they are enrolled in a “high deductible” health plan (HDHP) and not covered under a plan that is not a HDHP—which means that the employee is subject to cost sharing; covering medical expenses before the minimum deductible is reached would make employees ineligible to make or receive HSA contributions.

*Exception:* Existing HSA rules have an exception for “preventive” care, but not for services and items purchased to treat a disease.

*Modification:* IRS Notice 2020-15 provides that that:

- Group health plans that otherwise qualify as HDHPs will not lose that status merely because they cover the cost of testing for or treatment of COVID-19 before plan deductibles have been met.
- As in the past, any vaccination costs continue to count as preventive care and can be paid for by an HDHP.

# Families First Coronavirus Response Act

Section 6001(2) of the Families First Coronavirus Response Act generally requires that group health plans must cover COVID-19 testing and the initial screening.

Plans cannot require prior authorization or similar medical management requirement as a precondition (this provision of the act will stay in effect through the end of the national emergency period).

Covered services and related cost waivers apply to:

- Diagnostic testing
- Facility costs (physical office, urgent care center and emergency room)
- Healthcare provider services (in-person and telehealth)

# Impact on 401(k) and Other Retirement Plans

Investment benchmarks, which have been in rising since the financial crisis in 2008-09, are now experiencing major losses reminiscent of 2008, where target-date funds experienced losses exceeding 20 percent.

Participants may demand access to their retirement funds, and at a time where their account balances have already been decimated.

Expect the IRS to provide relief under the disaster relief authority conferred by Internal Revenue Code sections 7508 and 7508A, which set out a list of time sensitive acts that are automatically postponed for taxpayers affected by Presidentially declared disasters.

Expect a ramp-up in the volume and plan loans; and plan fiduciaries will also be under pressure to approve hardship distributions.

Similar to 1987 and 2008, plans that do not daily value will be under pressure to make interim valuations to avoid harming current participants at the expense or terminating employees.

Also similar to 1987 and 2008, defined benefit plans will have funding challenges that are mitigated only somewhat by generous smoothing rules.

# 401(k) Hardship Distributions

Plans are permitted to make hardship distributions in the case of declarations on national emergencies—plans may:

- Distribute employer contributions and investment earnings as well as employee contributions to 401(k) participants;
- Adopt an additional safe harbor category for FEMA declared disaster expenses and losses; and
- Adopt streamlined procedures that make some existing required conditions optional.

FEMA has issued declarations for New York, California and Washington State.

Once COVID-19 is declared to be a federal disaster, then financial needs stemming from COVID-19 automatically may qualify under existing hardship standards.

# Modifying Employer/Matching Contributions

Employer mandatory and discretionary contributions—General rule

- Plan amendments to reduce, eliminate or defer employer contributions
- Prospective vs. retroactive

Last-day-of-the year requirement: TAM 9735001, “once the conditions for receiving an allocation have been met, a plan amendment that adds further conditions, violates Code Sec. 411(d)(6)”

The context of, and trouble with, TAM 9735001

Matching contributions: payroll-by-payroll, true-ups and post year-end contributions and allocations



# Safe Harbor 401(k) Plans

Reg. § 1.401(k)-3(e)(1) provides in relevant part that “a plan will fail to satisfy the requirements of sections 401(k)(12), 401(k)(13), and this section, unless plan provisions that satisfy the rules of this section are adopted before the first day of the plan year and remain in effect for an entire 12-month plan year.”

Thus, mid-year changes, such as reduction or suspension of safe harbor contributions, adding or dropping safe harbor status, or changes in plan years, are permitted only as described in regulations.

# Conditions for reducing or suspending safe harbor matching contributions

All eligible employees must be provided with notice.

The reduction or suspension of safe harbor matching contributions must take effect no earlier than the later of 30 days after notice/amendment.

Eligible employees are given a reasonable opportunity prior to the reduction or suspension of safe harbor matching contributions to change elections.

The plan must be amended to provide that the ADP/ACP tests will be satisfied for the entire plan year in which the reduction or suspension occurs.

The requirements for the safe harbor must have been satisfied for the period through the effective date of the amendment.

# HIPAA

HIPAA applies to "Covered Entities," (i.e., health plans, healthcare providers, and health care clearinghouses); it does not apply to disability, life, or pension plans, nor does it apply directly to employers.

CMS/OCR Notice	Telehealth Initiative	Other HIPAA Disclosures
OCR will exercise its enforcement discretion and will not impose penalties for noncompliance with the regulatory requirements under the HIPAA rules against covered health care providers in connection with the good faith provision of telehealth services.	CMS/OCR announced a waiver potential HIPAA penalties for good faith use of telehealth during the emergency.	<ul style="list-style-type: none"><li>• Disclosures for treatment</li><li>• Disclosures for public health activities</li><li>• Disclosures to prevent a serious and imminent threat</li></ul>

Employers are free to require screening for a temperature in order to come on the work site; but they cannot access GHP information on employees that tested positive for the coronavirus for monitoring or other purposes. The former is an "employer" function; the latter involves a covered entity, i.e., the group health plan.

# **Furloughs and Disability and Life Insurance**

# Disability Insurance

## Is the STD and/or LTD plan fully insured?

If “yes” contact the disability carrier to see if the carrier will allow non working/compensated employees to be covered under a temporary furlough?

Obtain written confirmation that coverage for furloughed employees will be covered and for how long?

Obtain written confirmation that the occupation to be measured against disability will be the occupation the employee was performing at the time of furlough?

# Disability Insurance

## Reliance Standard

**How long can an employee remain covered by STD, LTD or Group Life in the event they are subjected to a temporary reduction in hours, or sent home as a result of a temporary layoff, furlough or facility closure?**

For policies without a continuation of coverage provision, including our standard disability policies, we will allow an employee to maintain insurance coverage for 60 consecutive calendar days if an employer temporarily Reduces an employee's hours; or, Sends the employee home as part of a lay-off, furlough or facility closure.

For policies with a continuation of coverage provision, including our standard life policies, we will follow the applicable contract provision. In instances where the provision allows coverage to continue for less than 60 consecutive calendar days, we will administratively extend the timeframe to 60 consecutive calendar days. In all instances:

The employer must maintain the employee's same employment status and continue all premium payments.

The 60 calendar days will be counted from the effective date of the change.

On the 61st consecutive calendar day from the effective date of the change, we will consider the change permanent if the employee's hours continue to be reduced, or the employee continues to be part of a lay off or furlough, or the facility does not reopen. The employee will then need to meet the requirements in the applicable policy to maintain coverage.

# Life Insurance

Confirm in writing with carrier if furloughed employees will be covered.

If employee is terminated, advise of right to convert to individual coverage.



# Retirement Plan Compliance

## During the Coronavirus Outbreak

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03/30/2020

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**WHAT DO I NEED TO KNOW ABOUT?**

# Legislative Update

## CARES Act

- Coronavirus, Aid, Relief and Economic Security, currently in Congress and expected to pass in the very near future.
- Expands access to loans and hardship withdrawals for retirement plan participants, in order to free up funds for individuals and families impacted by COVID-19 virus.
- Participant Loans
  - Allows participants to borrow up to 100% of their vested plan balances, up from current limit of 50%
  - Increases maximum loan amount from \$50,000 to \$100,000
  - Can delay the start of loan repayments for up to one year

# Legislative Update

## CARES Act (Con't)

- Hardship Withdrawals – Allows a participant to withdraw up to \$100,000 from their retirement plan
  - Participant or their spouse or dependent diagnosed with COVID-19
  - Participant has experienced adverse financial consequences from being quarantined, furloughed, laid off, unable to work due to lack of childcare due to COVID-19 (Self-certification)
  - Amount withdrawn not subject to IRS early withdrawal penalty
  - Income tax on amount withdrawn, payable over three years
  - Participant has three years to repay amount withdrawn, to avoid income taxation

# Legislative Update

## CARES Act (Con't)

- Retirement plans can adopt these new provisions immediately, even if the plan does not currently allow for hardship distributions or loans.
- Plan must be amended on or before the last day of the plan year beginning on or after Jan. 1, 2022.

# Legislative Update

## Tax Deadline Relief

- The IRS and Treasury Department recently announced the following relative to Retirement Accounts
  - 2019 Plan Year contributions to qualified retirement plans, that would have otherwise have an April 15, 2020 deadline is extended
  - Does NOT extend the April 15th deadline for the refunding of excess deferrals

# Changes to Your Employer Match

## How is your match defined in your plan document?

- Defined match formula (i.e. 50% of first 6%)
  - You will need to amend the plan to update (or remove) match formula
  - Provide notice to your employees
  - If you are a safe harbor match plan and suspend or eliminate the match during the plan year, you may be subject to ADP testing for the year
- Discretionary match
  - Prepare board resolution stating the effective date of the new (or ceasing of current) match formula
  - Provide notice to your employees

# WHAT ABOUT MY PLAN PARTICIPANTS?

# What Should I be Doing for Participants?

All about helping them with their concerns, anxiety and questions during these volatile markets and unprecedented times.

- Make sure your participants know how to access information on their retirement 401k provider's website and participant services 800#
- Some things we at MMA have done for our Retirement Services clients –
  - Sent articles and Brainshark presentations on topics such as 'Understanding Market Volatility', 'Dollar Cost Averaging', etc.
  - Hosted webinars on market volatility
  - 'Virtual' one-on-one sessions for participants to speak with our retirement educators on topics relating to their retirement plan balances





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