



# Welcome to the COVID-19: What Employers Need to Know Webinar


Thank you for joining today's update!

March 25, 2020





# A Few Quick Reminders!

- ▶ Our most up-to-date information is available on our online dashboard at [aleragroup.com/coronavirus](https://aleragroup.com/coronavirus).
  - This webinar recording will be added to the dashboard within 24 hours.
- ▶ Please use the Q&A box  at the bottom of your screen to ask a question to our experts.
  - Please note due to the high volume of questions, we will answer as many live questions as we are able and will post remaining answers in our online dashboard.

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In short: our lawyers and team members are not providing legal advice or legal services.



**For the latest updates, visit our live  
COVID-19 Dashboard  
[aleragroup.com/coronavirus](https://aleragroup.com/coronavirus).**

# Coronavirus Disease

- ▶ Disease is “coronavirus disease 2019” or “COVID-19”
- ▶ Timeline:
  - Jan. 30: World Health Organization (WHO) declared the outbreak a “public health emergency of international concern”
  - Jan. 31, U.S. Health and Human Services declared a public health emergency to aid the nation’s healthcare community in responding to COVID-19
  - Mar. 11, WHO publicly characterized COVID-19 as a pandemic (a global outbreak of disease)
  - Mar. 13, President Trump declared the COVID-19 outbreak a national emergency
  - Mar. 25, CDC has reported more than 44,000 cases from all states, DC, Puerto Rico, Guam and US Virgin Islands

# Employer Responsibilities

- ▶ Limit visitors and cancelling in-person meetings
- ▶ Restrict non-essential travel
  - If employee has traveled to an area with an outbreak, employer may request the employee work from home for 14 days
- ▶ Require employees to contact HR if they (or a family member) may have been exposed or if they intend to travel or attend large gatherings or are sick
  - Asking employees to report if they are sick is NOT a HIPAA violation
  - Do not share employee's names
- ▶ You CAN screen employees/take temperatures and assess risk prior to allowing individuals on-site



# Employer Responsibilities

- ▶ Educate employees on COVID-19, prevention & techniques to reduce spread
- ▶ Enforce stay-at-home policies if employees are sick
- ▶ Obey state “shelter in place” orders; seek counsel to determine if your business is considered essential (but if you are essential, practice social distancing and work from home as able)
- ▶ Many employers are having employees work from home until further notice
  - Make sure employees have proper technology and that it's secured



# Families First Coronavirus Response Act

- ▶ Provisions include **Emergency FMLA** and **Emergency Paid Sick Leave**
  - These provisions apply to employers with fewer than 500 employees
  - Follows FLSA joint employer rules & FMLA integrated employer rules
  - Emergency Paid Sick Leave also applies to public employers of any size
  - These provisions effective **APRIL 1<sup>ST</sup> 2020**; 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

# Families First Coronavirus Response Act

- ▶ **Emergency Family and Medical Leave Act**
- ▶ Does NOT change original FMLA regulations/applicability/etc – it is an add-on
- ▶ Amends FMLA to provides up to 12 weeks of job-protected leave for “a qualifying need related to a public health emergency” to employees who have been employed for at least 30 days
- ▶ A “qualifying need” is when an employee is unable to work (or telework) due to a need to care for a minor child if the child’s school or place of care has been closed or is unavailable due to a public health emergency
- ▶ After a 10-day elimination period, the rest of FMLA leave is paid at two-thirds of the employee’s regular rate based on normally scheduled hours, capped at \$200 per day and \$10,000 in total
  - Employees may, but cannot be required to, use paid leave during elimination period

# Families First Coronavirus Response Act

- ▶ **Emergency Family and Medical Leave Act (Cont.)**
- ▶ Exceptions may apply for small employers (under 50 EEs) if the required leave would jeopardize the viability of their business
  - More guidance on claiming exemption forthcoming
- ▶ An exception to the reinstatement requirement under FMLA is available to employers with fewer than 25 employees, if the employee's position no longer exists after the pandemic ends
- ▶ Employers may exclude employees who are health care providers or emergency responders from this emergency FMLA entitlement

# Families First Coronavirus Response Act

## ▶ Emergency Paid Sick Leave

▶ Provides paid sick time to an employee who is unable to work (at office or remotely) 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 has COVID-19 symptoms and is seeking medical diagnosis;
4. the employee is caring for an individual who is subject to a quarantine or isolation order;
5. the employee is caring for a child if the school or day care center has been closed, or the child care provider is unavailable, due to COVID-19 precautions; or
6. the employee is experiencing any other substantially similar condition specified by the regulatory agencies

# Families First Coronavirus Response Act

- ▶ **Emergency Paid Sick Leave (Cont.)**
- ▶ Employees may be entitled to 80 hours of paid sick time (pro-rated for part-time employees)
  - All employees are immediately eligible for this leave
- ▶ Leave is paid at the employee's regular rate, up to \$511 per day (\$5,110 in the aggregate) when leave is taken due to an employee's own illness or quarantine), and paid at two-thirds of the regular rate, up to \$200 per day (\$2,000 in the aggregate) when leave is taken to care for others
- ▶ Act includes anti-retaliation provisions; failure to pay required sick leave will be treated as a failure to pay minimum wages in violation of the FLSA

# Families First Coronavirus Response Act

- ▶ **When an employee is out to care for a child whose school or daycare is closed, the 2 leaves can be taken concurrently**
- ▶ First Emergency Paid Sick Leave (80 hours/10 days) at the \$2000 max during the EMFLA 10 day elimination period
- ▶ Then Emergency FMLA for the remaining 10 weeks at the 2/3 rate of pay
- ▶ Employees may be entitled to 80 hours of paid sick time (pro-rated for part-time employees)
  - All employees are immediately eligible for this leave

*Leave requirements apply to any active employee as of April 1 and later, regardless of whether they have been out on leave or work from home in the weeks or days preceding*



# Payroll Tax Credits

- ▶ When employers pay their employees, they are required to withhold from their employees' paychecks federal income taxes and the employees' share of Social Security and Medicare taxes. The employers then are required to deposit these federal taxes, along with their share of Social Security and Medicare taxes, with the IRS and file quarterly payroll tax returns (Form 941 series) with the IRS.
- ▶ Under guidance that will be released soon, eligible employers who pay qualifying sick or child care leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and child care leave that they paid, rather than deposit them with the IRS.
- ▶ The payroll taxes that are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.

# Payroll Tax Credits – Example from the IRS

- ▶ If an eligible employer paid \$5,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to \$5,000 of the \$8,000 of taxes it was going to deposit for making qualified leave payments. The employer would only be required under the law to deposit the remaining \$3,000 on its next regular deposit date.
- ▶ If an eligible employer paid \$10,000 in sick leave and was required to deposit \$8,000 in taxes, the employer could use the entire \$8,000 of taxes in order to make qualified leave payments and file a request for an accelerated credit for the remaining \$2,000.

# COVID-19 Scenarios and Benefit Implications

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	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 (pro-rated 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 (pro-rated for part-time employees) to FFCRA maximums.
Employee is severely ill with COVID-19	Probably Yes, depending on plan details	No	Yes, if employer is subject to FMLA and employee meets requirements	No	Up to 80 hours (pro-rated 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 (pro-rated 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 (pro-rated 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 (pro-rated 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 (pro-rated 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 (pro-rated 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 (pro-rated 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. Qualifying need is stated

Employees eligible for Emergency Paid Leave on date of hire.

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

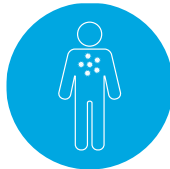
THIS ONLY APPLIES TO EMPLOYERS WITH 500 OR FEWER EMPLOYEES

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

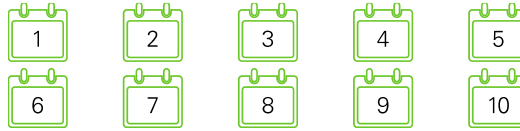


2) Employee is caring for a family member who has been diagnosed with COVID-19 or under quarantine for symptoms



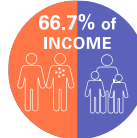
3) Employee is providing childcare for a minor whose school or daycare is closed because of COVID-19

### 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

# 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

# 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



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[aleragroup.com/coronavirus](https://aleragroup.com/coronavirus).  
For questions please see your Alera  
Group broker.**