



COVID-19 Benefits Updates

Updated 03.13.20

We believe it is our social responsibility to fully prioritize the wellbeing of our clients, colleagues and community while ensuring business continuity. In that light, we are taking preventative measures to support local and global efforts to contain the spread of COVID-19 (the coronavirus). Below are coronavirus-related updates that may impact your business.

IRS Notice 2020-15

On March 11, 2020, the Internal Revenue Service (IRS) issued Notice 2020-15 to advise that high deductible health plans (HDHPs) can pay for 2019 Novel Coronavirus (COVID-19) testing and treatment before plan deductibles have been met, without jeopardizing their status. According to the IRS, this also means that individuals with HDHPs that cover these costs may continue to contribute to their health savings accounts (HSAs).

Self-Funded, Fully-Insured, HSA or not, you probably have questions on how your plan will be covering the testing and treatment claims to come. Most administrators of self-funded plans are requiring plan sponsors to confirm whether they wish to cover these costs as preventive care. Please do not hesitate to call us for help in navigating this with your plan issuer or benefits administrator.

ADA Compliance

The Americans with Disabilities Act ("ADA") protects applicants and employees from disability discrimination. It is relevant to COVID-19 because it prohibits employee disability-related inquiries or medical examinations unless:

- They are job related and consistent with business necessity; or
- The employer has a reasonable belief that the employee poses a direct threat to the health or safety of him-or herself or others (i.e., a significant risk of substantial harm even with reasonable accommodation).

According to the Equal Employment Opportunity Commission (EEOC), whether a particular outbreak rises to the level of a "direct threat" depends on the severity of the illness. Employers are expected to make their best efforts to obtain public health advice that is contemporaneous and appropriate for their location, and to make reasonable assessments of conditions in their workplace based on this information.

The EEOC has said that sending an employee home who displays symptoms of contagious illness would not violate the ADA's restrictions on disability-related actions because advising such workers to go home is not a disability-related action if the illness ends up being mild, such as a seasonal influenza. On the other hand, if the illness were serious enough, the action would be permitted under the ADA as the illness would pose a "direct threat." In either case, an employer may send employees home, or allow employees to work from home, if they are displaying symptoms of contagious illness.

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ADA Compliance (continued)

The ADA requires that information about the medical condition or history of an employee, obtained through disability-related inquiries or medical examination, be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record. Employers should refrain from announcing to employees that a coworker is at risk of or actually has a disease. Instead, employers should focus on educating employees on best practices for illness prevention.

For more information on the ADA and pandemic planning in the workplace, [View this resource page from the EEOC.](#)

Employee Leave Requirements

If an employee, or an employee's family member, contracts COVID-19, the employee may be entitled to time off from work under federal or state leave laws. For example, an employee who is experiencing a serious health condition or who requires time to care for a family member with such a condition may be entitled to take leave under the Family and Medical Leave Act (FMLA). An illness like COVID-19 may qualify as a serious health condition under the FMLA if it involves inpatient care or continuing treatment by a health care provider. Employees may also be entitled to FMLA leave when taking time off for medical examinations to determine whether a serious health condition exists.

Many states and localities also have employee leave laws that could apply in a situation where the employee or family member contracts COVID-19. Some of these laws require employees to be given paid time off, while other laws require unpaid leave. Employers should become familiar with the laws in their jurisdiction to ensure that they are compliant.

Some employees may wish to stay home from work out of fear of becoming ill. Whether employers must accommodate these requests will depend on whether there is evidence that the employee may be at risk of contracting the disease. A refusal to work may violate an employer's attendance policy, but employers should consult with legal counsel prior to disciplining such an employee. However, if there is no reasonable basis to believe that the employee will be exposed to the illness at work, the employee may not have to be paid for any time that is missed.

Occupational Safety and Health Act (OSHA)

Under the federal Occupational Safety and Health Act of 1970 (the OSH Act), employers have a general duty to provide employees with safe workplace conditions that are "free from recognized hazards that are causing or are likely to cause death or serious physical harm." Workers also have the right to receive information and training about workplace hazards, and to exercise their rights as employees without retaliation.

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OSHA (continued)

There is no specific Occupational Safety and Health Administration (OSHA) standard covering COVID-19. However, some OSHA requirements may apply to preventing occupational exposure to COVID-19. In addition to the General Duty clause, OSHA's Personal Protective Equipment (PPE) standards and Bloodborne Pathogens standard may apply to certain workplaces, such as those in the healthcare industry.

Employers should continue to monitor the development of COVID-19 and analyze whether employees could be at risk of exposure. It is also important for employers to consider what preventative measures they can take to maintain safety and protect their employees from potentially contracting COVID-19.

Also, OSHA requires many employers to record certain work-related injuries and illnesses on their OSHA Form 300 (OSHA Log of Work-Related Injuries and Illnesses). OSHA has determined that COVID-19 is a recordable illness when a worker is infected on the job. Establishments that are required to complete an OSHA 300 log should be sure to include all COVID-19 infections that are work related

For more guidance on preparing workplaces for COVID-19, [view this resource document from U.S. DOL](#).

For plan specific questions, please reach out directly to your G&A benefits consulting team.