

# COVID-19: Compliance Considerations for Employers

## Webinar FAQ

### Employee Benefits

#### 1. In the event we need to issue temporary furloughs, will we be able or obligated to keep employees active on health insurance during the furlough period?

This is carrier and plan eligibility rule specific inquiry. A furlough is generally seen as a reduction in hours and many plans have minimum hour requirements to maintain active coverage. Where employees lose active coverage caused by a reduction in hours, they experience a COBRA qualifying event. Multiple potential exceptions may apply:

- Temporary waiver of carrier eligibility requirements in response to COVID-19 crisis
- Plan documents specifically address eligibility during non-protected leave
- Applicable Large Employers (ALEs): ACA stability period eligibility addressed in plan documents

Employers should check with their carrier to see if benefits can be maintained during furlough as long as premiums are paid.

#### 2. What are employer options for collecting premium payments from employees during periods of unpaid leave?

An employer can set up a repayment agreement for employees that return to work (“catch-up”) or ask employees to send in checks/money to pay for their portion during the leave, but no more frequently than regular payroll deductions would occur (“pay-as-you-go”).

#### 3. Can employees cancel or change FSA enrollments during COVID-19?

Currently, normal FSA mid-year election change rules apply. Employees are permitted to make FSA election changes when they have a valid qualifying event and plan documents should be referenced when determining if mid-year changes are allowed on a case by case basis.

#### 4. How will periods of unpaid leave affect future eligibility for variable hour employees who are currently in an ACA stability period?

A reduction in hours not attributed to protected leave can impact eligibility for the next stability period, as variable hour employees have their hours tracked on an annual basis to determine ongoing eligibility. A reduction in hours could result in employees not meeting the annual hour threshold for future ACA stability periods. If, when an employee returns to active work, they are expected to work 30+ hours/week, they should be offered coverage as a full-time employee. **Note:** These ACA rules are specific to Applicable Large Employers with 50+ FTEs.

## New York Paid Sick Leave and Paid Family Leave

### 1. When does New York Paid Sick Leave and Paid Family Leave apply?

The NY benefit is effective March 18, 2020 for employees who are under a formal mandatory or precautionary quarantine or isolation issued by the State, New York State Department of Health, local Board of Health, or authorized governmental entity.

Employees who do not show symptoms or have not been diagnosed with COVID-19 are not eligible for Emergency Paid Sick or Paid Family Leave.

### 2. Is an employee eligible for the NY benefit if the employee voluntarily quarantines?

No. The benefit is only available when an order of quarantine is issued by the State of New York New York State Department of Health, local Board of Health or any government entity authorized to issue this type of order.

### 3. Are the paid sick leave days business or calendar days?

The NY Department of Labor has determined the number of paid days is calendar days, and the employee should receive the amount the employee would have received for the period.

### 4. Can an employer deduct the paid sick leave from existing accrual?

No. Employers must provide paid sick leave separate from any existing accruals.

### 5. Does NY Paid Sick Leave apply retroactively?

No. The benefit is only available as of the effective date of March 18, 2020. However, if an eligible quarantine began prior to March 18<sup>th</sup> but continues past March 18<sup>th</sup>, the days from March 18<sup>th</sup> are eligible for paid sick leave.

### 6. When must the paid family leave claim for COVID-19 be submitted for payment?

The employee must submit the paid family leave claim within 30 days from the first day the employee is taking leave.

### 7. Has the NY Department of Labor prepared responses to frequently asked questions?

Yes. [Click here](#) for the NY Department of Labor responses to frequently asked questions.

## Families First Coronavirus Response Act

### 1. When is the effective date of FFCRA?

FFCRA is effective April 1, 2020, and covers leave taken from April 1, 2020 through December 31, 2020.

### 2. Do employers have to post a notice about FFCRA?

Yes, the US Department of Labor has released a poster which must be posted in a conspicuous location in all work locations. It can be emailed or directly mailed to employees. The poster can also be provided via intranet or external website.

[https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA\\_Poster\\_WH1422\\_Non-Federal.pdf](https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf)

### 3. Are paid sick leave and expanded family and medical leave requirements retroactive?

No. The law will respond as of April 1, 2020.

### 4. Has the US Department of Labor issued Frequently Asked Questions to explain the many intricacies of FFCRA?

Yes, the US Department of Labor has released Frequently Asked Questions to provide guidance. [Click here](#) to review the US Department of Labor frequently asked questions.