

2020

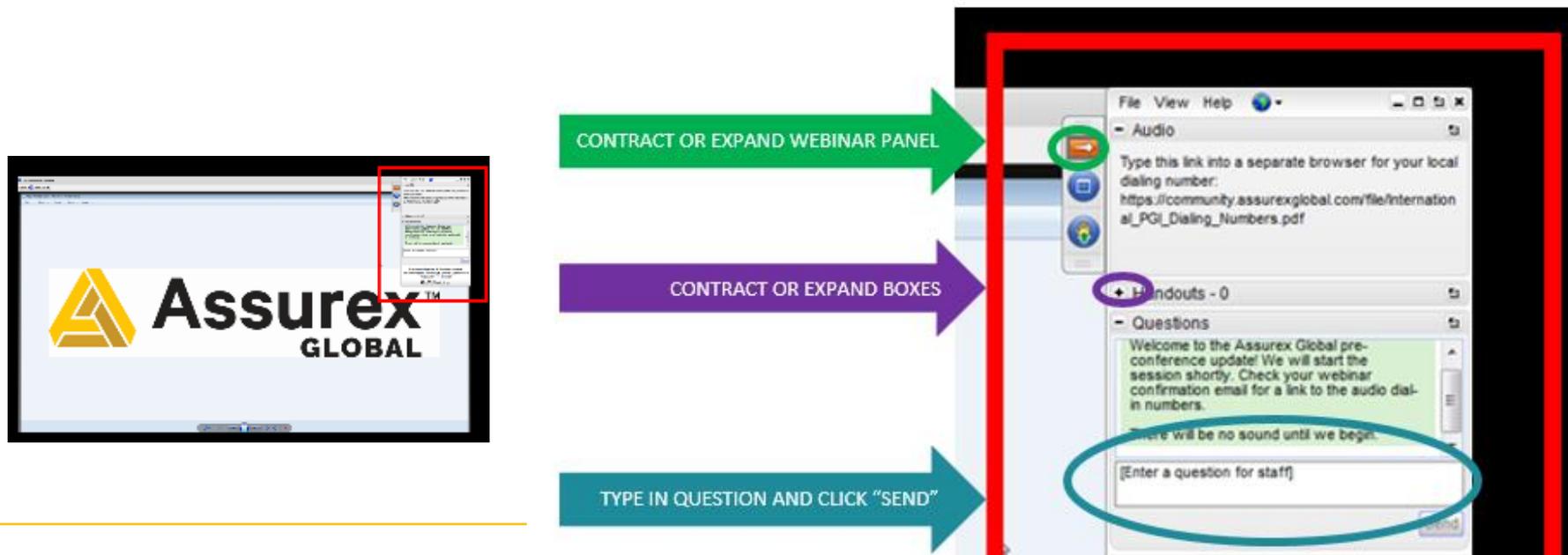
COVID-19 & Employee Benefits

HSA Compliance and Administration

Presented by Benefit Comply

COVID-19 & Employee Benefits

- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
- You will be able to submit questions during the webinar by using the “Questions” or “Chat” box located on your webinar control panel.
- Slides can be printed from the webinar control panel – expand the “Handouts” section and click the file to download.



Assurex Global Partners

- Bolton & Co.
- Catto & Catto
- Cottingham & Butler
- Cragin & Pike, Inc.
- Daniel & Henry
- Foa & Son
- The Graham Co.
- Haylor, Freyer & Coon, Inc.
- Henderson Brothers, Inc.
- The Horton Group
- The IMA Financial Group
- INSURICA
- Kapnick Insurance Group
- Lipscomb & Pitts Insurance
- Lyons Companies
- The Mahoney Group
- MJ Insurance
- Oswald Companies
- Parker, Smith & Feek, Inc.
- PayneWest Insurance
- Pritchard & Jerden
- R&R/The Knowledge Brokers
- RCM&D
- The Rowley Agency
- Starkweather & Shepley
- Sterling Seacrest Partners
- The Underwriters Group
- Woodruff Sawyer

AGENDA

- Background
- COVID-19 Testing Coverage Requirement
- The Emergency Paid Sick Leave Act (Paid Sick Leave)
- The Emergency Family and Medical Leave Expansion Act (Expanded FMLA)
- Employer Tax Credits
- Benefit Eligibility Issues
- Other Issues – HIPAA, §125 Election Changes, Exchange Coverage

Note - Elements of the Act We Are Not Covering

- *Food assistance focusing on children of families, additional Federal unemployment insurance assistance to states, increased Medicaid funding, etc.*

Additional Resources - <https://benefitcomply.com/coronavirus/>

The Families First Coronavirus Response Act

- Effective Date
 - Coverage for COVID Testing – March 18 until further notice
 - Emergency Paid Sick leave and Expanded FMLA – April 1 through end of 2020
 - No retroactive effect, no credit for previous paid leave provided
- Notice Requirement
 - Model notice is available on DOL's website
 - Must post notice on employer's premises or website, or mail/email the notice to employees
- Additional Guidance Needed
 - There are still many unanswered questions, but regulatory agencies are expected to continue issuing guidance over the upcoming weeks

The Families First Coronavirus Response Act

- Employers Covered Under These Requirements
 - COVID-19 Testing Coverage Requirement
 - All employer-sponsored health plans, fully-insured and self-funded
 - Emergency Paid Sick Leave and Expanded FMLA
 - Any size public employer and private employers (including not-for-profits) with <500 employees
 - Count all employees (FT and PT) in the U.S. at the time leave is requested
 - Includes variable, temporary, seasonal, etc., but does not include independent contractors
 - If entities are “joint employers” under FLSA, all common employees must be counted by each entity
 - If entities are an “integrated employer” under FMLA, employee counts may need to be aggregated
 - Employers with <50 employees may be exempt from providing paid leave due to school closings or childcare unavailability if it would jeopardize the viability of the business as a going concern
 - Employers with 500+ employees do NOT have to comply

COVID-19 Diagnostic Testing

COVID-19 Diagnostic Testing

- Health Plans Must Cover COVID-19 Testing
 - Most health plans must cover costs associated with COVID-19 diagnostic testing with no cost-sharing
 - Includes any costs related to taking the test (e.g. the office visit, lab costs, etc.), but does not apply to medical care to treat someone sick from COVID-19
 - Applies to employer-sponsored group health plans (both fully-insured and self-funded), government-sponsored coverage, and individual health plans
 - Appears these requirements do not apply to excepted benefits, short-term health plans, or healthcare sharing ministries
- HSA-Eligibility
 - IRS Notice 2020-15 - Coverage of COVID-19 related testing or treatment prior to meeting an HDHP's plan deductible will not interfere with an individual's HSA eligibility

The Emergency Paid Sick Leave Act

Paid Sick Leave

Qualifying Reasons for Paid Sick Leave

Directly Related to the Employee

Employee is subject to a federal, state or local quarantine or isolation order related to COVID-19

Employee has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19

Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis

Related to Employee Needs to Care for Others

Employee is caring for another **individual** who: (i) is subject to a federal, state, or local quarantine or isolation order related to COVID-19; or (ii) has been advised by a healthcare provider to self-quarantine due to COVID-19

Employee is unable to work (or telework) due to caring for a son/daughter under age 18 where the school or daycare has been closed related to COVID-19 precautions (Note: May also qualify for Expanded FMLA)

**** Upcoming guidance may specify additional qualifying reasons*

Paid Sick Leave

- Which Employees are Eligible?
 - All employees are eligible (FT and PT) regardless of length of employment
 - An employer is not required to provide paid sick leave to employees who are health care providers or emergency responders
 - “Health care provider” is defined under the FMLA, but “emergency responder” is not clearly defined
 - Does not necessarily apply to all employees of an employer who provides healthcare

Paid Sick Leave

- How Much Paid Leave?
 - Full-time employees – Up to 80 hours (2 weeks for exempt)
 - Part-time employees – 2 weeks equal to the number of hours generally worked in a 2-week period
 - For variable hour employees, use a 6-month average
 - If employed <6 months, use hours agree upon at hire or average scheduled to work over the entire employment period
 - Intermittent leave permitted only for caring for a child under age 18 due to school/daycare closure
 - At the employer's discretion
 - Up to 2 weeks is available only once per year, even if there are multiple qualifying reasons

Paid Sick Leave

- How Much Pay?
 - If the employee is sick or subject to quarantine
 - 100% of pay up to \$511 per day (\$5,110 in the aggregate)
 - If the employee is absent to care for another individual
 - 2/3 of pay up to \$200 per day (\$2,000 in the aggregate)
 - Based on the greater of employee's regular rate of pay or minimum wage (federal, state or local)
 - **Employer may not require an employee to use other paid leave provided by the employer before using the new paid sick leave**
 - Employer may allow employees to use other paid time available to supplement Paid Sick Leave

The Emergency Family and Medical Leave Expansion Act

Expanded FMLA

- Basics
 - New paid FMLA-protected leave for employees who cannot work because they need to stay home with children under age 18 due to school or daycare closure
 - Does not extend pay to other traditional FMLA leave events (e.g. serious health condition, serious health condition of a family member, maternity leave)
 - May apply to small employers not subject to traditional FMLA
 - Affects private employers with <500 employees and public employers of any size
 - Expanded FMLA rules apply even to private employers with <50 employees
 - Employers with <50 employees may be exempt if it would jeopardize the viability of the business as a going concern

Expanded FMLA

- Which Employees are Eligible?
 - Employee (FT or PT) who has been employed for at least 30 calendar days
 - Employee cannot work because employee needs to stay home to care for child due to school or daycare closure related to *“an emergency with respect to COVID-19 declared by a Federal, State, or local authority”*
 - No employee or child illness or symptoms required to qualify for the leave
 - Expanded FMLA is designed for employees who are unable to work (or telework) due to a child being at home

Expanded FMLA

- How Much Paid Leave?
 - Up to 12 weeks in a 12-month period as determined by existing FMLA rules
 - Does not add additional time to traditional FMLA eligibility
 - For example – If the employee has already used 5 weeks of FMLA earlier in the 12-month period (e.g. for maternity leave), the employee is only eligible for 7 weeks of expanded FMLA leave and pay
 - Intermittent leave permitted at the employer's discretion
- How Much Pay?
 - First 10 days of leave may be unpaid
 - Employees may also qualify for Emergency Paid Sick Leave, which requires payment for the first 10 days
 - Employees can also use any accrued vacation, personal, or sick leave subject to employer's policy
 - The remainder of the leave (up to 12 weeks) must be paid at no less than 2/3 of pay up to \$200 per day (\$10,000 in the aggregate)
 - Pay is based on the greater of employee's regular rate of pay or minimum wage (federal, state or local)
 - Employer may allow employees to use other paid time available to supplement Expanded FMLA

Expanded FMLA

- Other FMLA Rules Assumed to Apply to Expanded FMLA
 - Notice and paperwork requirements
 - Group health plan continuation
 - Employer must continue offering group health benefits under the same terms as if the employee was actively at work
 - Same employer contributions for as long as the employee is eligible for FMLA-protected leave
 - Employers must generally reinstate employees after their FMLA leave period ends
 - There is an exception to the reinstatement requirement for small employers with <25 employees experiencing significant economic hardship

Interaction – Paid Sick Leave & Expanded FMLA

- For **ALL** (FT and PT) Employees:
 - Two weeks (up to 80 hours) of paid leave at 100% regular pay (or minimum wage, if higher) if employee is unable to work because the employee is quarantined and/or experiencing COVID-19 symptoms & seeking a medical diagnosis
 - Two weeks (up to 80 hours) of paid leave at 2/3 the employee's regular rate of pay (or minimum wage, if higher) if employee is unable to work because of a need to care for an individual subject to quarantine, or care for a child under age 18 whose school or daycare is closed related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the agencies
- For Employees (FT and PT) Who Have Worked **At Least 30 Days**:
 - Up to an additional 10 weeks of paid leave at 2/3 regular rate of pay (or minimum wage, if higher) if employee is unable to work because of a need to care for a child under age 18 whose school or daycare is closed related to COVID-19

Interaction – Paid Sick Leave & Expanded FMLA

- Example 1 - Employee cannot work to stay home with child – No one is ill or quarantined
 - First 2 weeks qualify as Paid Sick Leave and Expanded FMLA – 2/3 of regular rate of pay up to \$200 per day (\$2,000 in the aggregate)
 - After 10 days (and up to an additional 10 weeks), 2/3 of regular rate of pay up to \$200 per day (\$10,000 in the aggregate) under Expanded FMLA
- Example 2 – Employee is quarantined due to symptoms AND the employee cannot work due to need to care for child for to 12 weeks
 - First 2 weeks qualify as Paid Sick Leave and Expanded FMLA – 100% of regular rate of pay up to \$511 per day (\$5,110 in the aggregate)
 - After 10 days (and up to an additional 10 weeks), 2/3 of regular rate of pay up to \$200 per day (\$10,000 in the aggregate) under Expanded FMLA

Employer Tax Credits

Employer Tax Credits

- Tax Credits to Offset Employer Costs
 - Impacted employers will receive refundable tax credits applied against the quarterly payroll tax returns (Form 941s)
 - Eligible employers may retain an amount of the payroll taxes equal to the amount of paid leave plus related group health plans costs rather than deposit them with the IRS
 - Payroll taxes available for retention include withheld federal income taxes, as well as employee and employer share of Social Security and Medicare taxes
 - If there are insufficient payroll, employers may file a request for an accelerated payment from the IRS (IRS expects to process requests in 2 weeks or less)
- No Employer “Stimulus” Money
 - Tax credit will only reimburse employers for costs associated with Emergency Paid Sick Leave and Expanded FMLA Leave
- Additional Guidance Needed
 - Additional IRS guidance expected in the next week

Plan Eligibility Issues

Plan Eligibility Issues

- Determine Which Federal Leave Rules Apply

Qualifying Reason for Leave	Applicable Federal Leave Requirements
Time off needed due to employee or family member illness	Employee may qualify for Paid Sick Leave and traditional FMLA
Time off needed due to quarantine	Employee may qualify for Paid Sick Leave
Employee cannot work because of need to care for a child	Employee may qualify for Sick Leave and Expanded FMLA

- These Federally-Protected Leaves Require Continued Group Health Plan Eligibility
- Other Considerations
 - Is the employee eligible for other employer provided time off or leave benefits?
 - Is the employee eligible for state-mandated time off or leave benefits?
 - What are the existing plan eligibility rules relative to any of the above situations?
 - What will the carrier (or stop-loss carrier) provide if employer wants to expand eligibility beyond current rules?

Plan Eligibility Issues

- Traditional FMLA Rules – Not Altered by New Legislation
 - All public entities regardless of size and private employers with 50 or more employees must still comply with traditional FMLA
 - Eligible employees:
 - (i) work for a covered employer;
 - (ii) worked for the employer for at least 12 months
 - (iii) have at least 1,250 hours of service during the previous 12-month period; and
 - (iv) work at a location where the employer employs at least 50 employees within 75 miles of that worksite
 - Traditional FMLA Events
 - Employee's serious health condition
 - Care for a spouse, child, or parent with a serious health condition
 - Newborn or adopted child
 - Certain military events
 - Benefits during FMLA-protected leave
 - Must continue group health plan benefits under the same terms as if the employee was actively at work, including the same employer and employee contributions

Plan Eligibility Issues

- Furloughs – Employees Remain Employed
 - DOL guidance indicates Paid sick leave and Expanded FMLA are not available to employees whose hours are reduced because of a lack of work or pursuant to a Federal, State or local directive
 - If there is a reduction in hours/leave of absence, it's necessary to consider plan eligibility rules and any applicable leave policies in order to properly administer benefits
 - An employer may already have a leave of absence policy for specified circumstances which extend benefit eligibility for a period of time
 - ALE eligibility considerations (“employer mandate”)
 - If an employer is using the look-back measurement method, employees may remain eligible for benefits for the duration of the current stability period, unless employment is terminated
 - If an employer is using the monthly measurement method, employees may not meet current plan eligibility requirements during a period of reduced hours
- Termination of Employment
 - If employment is terminated, employees will typically no longer be eligible for benefits and are not eligible for the Paid Sick Leave or Expanded FMLA

Plan Eligibility Issues

- COBRA or State Continuation
 - Generally applicable to loss of eligibility due to leaves, furloughs and terminations
 - Employer could choose to subsidize COBRA for a period of time
 - If employee elects COBRA, employee may be ineligible to enroll in individual coverage through the Exchange until next open enrollment period
- Employers wishing to expand eligibility related to COVID-19
 - Employers have flexibility to amend current leave and eligibility issues
 - IMPORTANT NOTE – Carriers and stop-loss carriers are not automatically obligated to honor expanded eligibility rules. Employers must coordinate with carriers to expand eligibility
 - Some state unemployment benefits may be impacted by ongoing benefit eligibility

Other Issues

Other Issues

- §125 (Cafeteria) Plan Election Changes
 - Elections irrevocable unless employee has election change event specified in §125
 - Permitted election changes related to COVID-19 situation
 - A termination of benefit eligibility due to an employment status change (leave or termination)
 - A change in the cost of coverage initiated by the employer
 - Other Changes
 - Existing §125 rules do not permit an election change due to a reduction in pay or hours with no loss of benefit eligibility or change in the cost of coverage – IRS unlikely to enforce
- HIPAA Privacy
 - Learning about an employee or family medical condition directly from the employee or family member is not subject to HIPAA rules
 - HIPAA PHI protections for employer plans is for health plan related individual identifiable information, not all employee medical information
 - Other employment law and general employee privacy rules may apply

Other Issues

- **Exchange Coverage & Subsidy Eligibility**
 - Employees who lose eligibility for group medical coverage, or for whom coverage becomes unaffordable due to a decrease in employer contributions, will likely qualify for a special enrollment through a public Exchange
 - Some states have opened up a special open enrollment period due to the COVID-19 crisis allowing enrollments even when individual do not meet special enrollment requirements
 - Subsidy eligibility toward coverage purchased through a public Exchange:
 - Not enrolled in any minimum essential coverage;
 - Not eligible for minimum value, affordable coverage offered through an employer; and
 - Household income of 100-400% of the federal poverty level
- **Employer Communication of Exchange Coverage Options**
 - Employers may want to be more involved in communicating individual health insurance options to employees losing plan eligibility

HSA Compliance & Administration

Health Savings Accounts (HSAs) - FAQs

- How does eligibility for HDHP coverage differ from eligibility to Contribute to an HSA?
 - Eligibility HDHP coverage is based upon plan eligibility rules set by the employer or insurance carrier (e.g., averaging 30 or more hours of service per week)
 - Eligibility to contribute to an HSA is determined by federal laws and regulations, as follows:
 - Must be enrolled in a qualifying high-deductible health plan (HDHP);
 - May not have any other “disqualifying coverage”, including Medicare; and
 - Cannot be claimed as a tax dependent by another individual
- Whose Qualifying Medical Expenses are Eligible to be Reimbursed by the HSA?
 - Reimbursement is allowed on a tax-favored basis for qualified medical expenses for the HSA account holder, as well as for the account holder’s spouse and tax dependents, even if the spouse or other tax dependents are not enrolled in HDHP coverage or have other disqualifying coverage (e.g. Medicare)

Health Savings Accounts (HSAs) - FAQs

- Does turning 65, or becoming Medicare-eligible, make the individual ineligible to contribute to an HSA?
 - Individuals who are “entitled” to Medicare (both eligible and enrolled) are ineligible to contribute to an HSA. Mere eligibility for Medicare (or reaching age 65) does not affect HSA eligibility
- If an employer wants to contribute to an HSA, is it okay to differentiate contributions between categories of employees, or to match some or all employee HSA contributions?
 - Employer contributions made outside a cafeteria plan are subject to the comparability rules, which require the employer to make the same contribution (or the same % of the deductible) for all HSA-eligible employees in a given tier (e.g., single or family) in the same category (full-time, part-time, or former employees)
 - If the HSA is run through the employer’s cafeteria plan (i.e. allows employees to pre-tax HSA contributions), there is more flexibility to differ contributions (e.g., matching contributions, or contributions by class of employee) so long as it does not cause an issue under §125 nondiscrimination rules

Assurex Global Partners

- Bolton & Co.
- Catto & Catto
- Cottingham & Butler
- Cragin & Pike, Inc.
- Daniel & Henry
- Foa & Son
- The Graham Co.
- Haylor, Freyer & Coon, Inc.
- Henderson Brothers, Inc.
- The Horton Group
- The IMA Financial Group
- INSURICA
- Kapnick Insurance Group
- Lipscomb & Pitts Insurance
- Lyons Companies
- The Mahoney Group
- MJ Insurance
- Oswald Companies
- Parker, Smith & Feek, Inc.
- PayneWest Insurance
- Pritchard & Jerden
- R&R/The Knowledge Brokers
- RCM&D
- The Rowley Agency
- Starkweather & Shepley
- Sterling Seacrest Partners
- The Underwriters Group
- Woodruff Sawyer

2020

COVID-19 & Employee Benefits

HSA Compliance and Administration

Presented by Benefit Comply