

FYI[®] Roundup

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COVID-19 and the workplace: a six-month recap

As the pandemic continues, employers grapple with the ongoing impact on their workplaces and workforces. Even as essential businesses remain open, others look to resume business operations or are shuttered. Federal, state and local governments have taken steps to help employers and employees navigate these challenging times. This special COVID-19 edition of *FYI Roundup* features our *FYIs* highlighting significant HR and benefits developments over the past six months.

Volume 43

Issue 58

September 11, 2020

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Background

From the onset of the pandemic last March, employers across the country have struggled to keep their doors open, payrolls maintained and businesses afloat. Beginning with the Families First Coronavirus Response Act, Congress provided new paid leave and extended jobless benefits to individuals unable to work for COVID-related reasons along with incentives for businesses to avoid layoffs. New state and local mandates were put in place as well. Keeping up with the rapidly evolving legal landscape over the past few months has been challenging for employers, both large and small. We categorize below recent issues of *FYI* that highlight key HR and benefit developments to keep in mind as you look to continue or to resume operations in the coming days.

Legislative developments

Two major pieces of legislation were enacted in March 2020 to deal with the COVID-19 emergency — the Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act that created the Paycheck Protection Program to help small businesses avoid layoffs.

Coronavirus bill provides new employee paid leave benefits

On March 14, the U.S. House of Representatives passed the Emergency Families First Coronavirus Response Act (H.R. 6201) in response to the spread of the coronavirus across the country. The bill includes, among other things, provisions relating to paid leave benefits. (See our [March 18 FYI](#).)

President signs coronavirus bill

On March 18, the Senate overwhelmingly approved the Families First Coronavirus Response Act (H.R. 6201) without any changes to the House-passed bill and the president immediately signed it into law. The new law provides paid leave benefits, enhances unemployment insurance benefits, institutes free COVID-19 testing, and provides certain tax credits to help cover benefit costs. (See our [March 19 FYI Alert](#).)

Key health and welfare provisions in CARES Act

The Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law by President Trump on March 27, after the U.S. House of Representatives followed the Senate and approved the bill. (See our [March 31 FYI Alert](#).)

Loan forgiveness expanded under the Paycheck Protection Program

The Paycheck Protection Program (PPP) provides short-term loans for small businesses to maintain payroll. The Paycheck Protection Program Flexibility Act of 2020, enacted on June 5, amends the Small Business Act and the CARES Act to make it easier for PPP loan recipients to qualify for loan forgiveness. Other than the extended maturity for new PPP loans, the changes were effective as if they were included in the CARES Act and apply to any loans made under the PPP. (See our [June 8 FYI Alert](#).)

Paycheck Protection Program loan application deadline extended

On July 4, the president signed a bill extending the deadline to apply for short-term loans under the Paycheck Protection Program from June 30 to August 8, 2020. The extended application period for PPP loans keeps the program open and provides small businesses additional time to seek funding. (See our [July 7 FYI Alert](#).)

Benefit plan issues

In the face of the health emergency, federal regulators sought to provide relief for employee benefit plans as well as their participants and beneficiaries.

Impact of COVID-19 on HIPAA compliance and employer considerations

In the wake of COVID-19, HIPAA's security and privacy rules addressing the disclosure of protected health information and, in particular, electronic protected health information are front and center. (See our [April 30 FYI](#).)

Agencies extend timeframes for HIPAA, COBRA and claims actions

The DOL and Department of the Treasury provided relief to group health plans, disability and other welfare benefit plans, pension plans and their participants and beneficiaries who have been affected by COVID-19 by extending certain timeframes that otherwise would apply to them. (See our [May 7 FYI](#).)

DOL, IRS issue additional retirement plan relief

The DOL, Department of the Treasury, and the IRS issued joint guidance providing certain relief for retirement plans from deadlines for providing benefit statements, annual funding notices, and other notices or disclosures under ERISA. (See our [May 12 FYI](#).)

IRS expands permissible mid-year cafeteria plan election changes

To assist employees affected by the COVID-19 outbreak, the IRS significantly increased employer flexibility in allowing mid-year election changes for cafeteria plans, health FSAs and dependent care FSAs. These changes are optional for employers and are only effective for 2020. (See our [May 14 FYI Alert](#).)

“Physical presence” requirement for witnesses and notaries temporarily lifted

IRS provided temporary relief from the “physical presence” requirement for the 2020 calendar year for qualified retirement plan participant elections (including spousal consents) that must be witnessed by a plan representative or by a notary public of a state that permits remote electronic notarization. (See our [July 14 FYI](#).)

Testing and diagnostic services

The DOL, HHS, and Treasury provided guidance to group health plan sponsors on covering COVID-related diagnostic services and treatment.

IRS relaxes HDHP requirements in response to COVID-19

In response to the coronavirus crisis, IRS issued guidance allowing HDHP/HSA plans to cover diagnostic services and treatment of COVID-19 prior to satisfaction of the plan’s deductible without impacting employees’ ability to make contributions to the HSA. (See our [March 11 FYI Alert](#).)

Guidance issued on COVID-19 diagnostic testing coverage mandate

The DOL, HHS, and Department of the Treasury issued a set of FAQs that provide guidance to group health plan sponsors on various issues related to implementation of the COVID-19 diagnostic testing mandate. (See our [April 15 FYI Alert](#).)

Additional guidance on COVID-19 diagnostic testing coverage mandate

The DOL, HHS, and Department of the Treasury recently issued a new set of FAQs that provide additional guidance for group health plan sponsors on a variety of questions concerning implementation of the COVID-19 diagnostic testing mandate. (See our [July 1 FYI](#).)

Expanded leave benefits

The DOL provided rolling guidance clarifying employer obligations to provide paid leave benefits for COVID-related reasons.

DOL issues guidance on paid leave benefits under Families First Coronavirus Response Act

On March 24, the DOL published its first round of guidance on the paid sick leave and paid family and medical leave provisions of the FFCRA. The guidance addresses critical questions for employers, such as how to determine whether they are subject to the new leave requirements, how to count hours for part-time employees, and how to calculate the wages employees are entitled to under the new law. (See our [March 26 FYI](#).)

DOL issues FFCRA guidance on camp closures

Among other things, the FFCRA requires covered employers to provide emergency paid leave to employees who are unable to work due to the closure of their child's school or place of care for COVID-19 related reasons. Recent DOL guidance confirms that leave under the FFCRA is available for virus-related summer camp and enrichment program closures or cancellations. (See our [July 15 FYI](#).)

DOL offers additional COVID-19 guidance under the FMLA

Updated COVID-19 guidance from the DOL's Wage and Hour Division addresses qualifying for — and returning to work from — FMLA leave. New Q&As focus on telemedicine and testing issues employers currently face in managing coronavirus-related leaves. (See our [July 30 FYI](#).)

Return-to-work considerations

The DOL, EEOC and OSHA issued return-to-work guidance addressing a myriad of stakeholder concerns.

EEOC issues COVID-19 return-to-work and antibody testing guidance

Supplemental guidance issued by the EEOC provides several critical clarifications on the ADA, accommodations, harassment and other COVID-19 related issues. It confirms that employers may not require antibody testing before allowing employees to re-enter the workplace. (See our [June 24 FYI](#).)

OSHA issues guidance on returning employees to work

Recent OSHA return-to-work guidance for nonessential businesses supplements earlier agency advice on the risk of workplace exposure to COVID-19. It provides a useful framework for reopening, focusing on the need for employers to incorporate basic hygiene, social distancing, workplace controls and flexibilities, and employee training into their return-to-work strategies. (See our [July 8 FYI](#).)

DOL updates return-to-work guidance under the FFCRA

On July 20, the DOL's Wage and Hour Division provided additional guidance on return-to-work issues under the FFCRA. Four new Q&As highlight certain reinstatement obligations, leave entitlements, and child care issues employers may have to navigate when bringing employees back from leave or furlough. (See our [July 28 FYI](#).)

DOL issues back-to-school guidance on paid leave and unemployment benefits

On August 27, the DOL clarified the circumstances under which working parents who are navigating childcare arrangements may be eligible for FFCRA leave when their children start the new school year. Separately, it addressed the availability of unemployment benefits under the CARES Act for students' caregivers as schools reopen. (See our [September 9 FYI](#).)

Wage and hour compliance

Updated DOL guidance addressed employers' ongoing wage and hour challenges as they continue or resume operations.

DOL updates guidance on COVID-19 and the Fair Labor Standards Act

Updated guidance from the DOL's Wage and Hour Division addresses ongoing wage and hour challenges that employers are facing. Six new Q&As highlight common telework, hazard pay, and exempt status issues employers may encounter when continuing or resuming operations during the COVID-19 emergency. (See our [July 30 FYI](#).)

DOL issues FFCRA guidance for government contractors

On August 3, the DOL issued guidance for employers with federal contracts covered by the McNamara-O'Hara Service Contract Act or the Davis-Bacon Act on complying with the FFCRA. Q&As clarify government contractors' pay obligations to employees who take leave under its emergency paid sick leave and expanded family and medical leave provisions. (See our [August 19 FYI](#).)

DOL issues telework pay guidance in response to COVID-19

On August 24, the DOL's Wage and Hour Division released Field Assistance Bulletin 2020-5 clarifying employers' obligations under the Fair Labor Standards Act (FLSA) to track — and properly pay for — the hours of compensable work performed by nonexempt employees working remotely.

While the guidance focuses on the telework surge stemming from the COVID-19 emergency, it applies to other telework or remote work arrangements as well. (See our [August 27 FYI](#).)

New state & local mandates

States and cities imposed new obligations on employers to provide sick leave and put COVID-related job protections in place.

New York mandates paid sick leave for employees under quarantine or isolation orders due to COVID-19

On March 18, New York enacted legislation requiring employers to provide sick leave and job protection to employees who are subject to mandatory or precautionary quarantine or isolation orders by New York state or other authorized governmental entity or health authority due to COVID-19. The amount of leave that must be provided and whether it is paid or unpaid depends on the employer's size and net income. (See our [March 24 FYI](#).)

New York releases guidance on COVID-19 leave

On March 18, the New York law requiring employers to provide sick leave and job protection to employees under quarantine or isolation orders as a result of COVID-19 and expanding eligibility for state paid family leave and disability benefits went into effect. FAQs posted by the state clarify some of the law's provisions. (See our [March 31 FYI Alert](#).)

San Francisco ordinance creates new reemployment rights

On June 23, the San Francisco Board of Supervisors passed an emergency ordinance requiring employers with 100 or more employees to first offer reemployment to workers laid off for COVID-related reasons before rehiring for the same or similar jobs. The ordinance became effective on July 3 without the Mayor's signature and will expire after 60 days unless the Board of Supervisors extends it. (See our [July 17 FYI](#).)

Colorado enacts paid sick leave law

On July 14, Colorado enacted the Healthy Families and Workplaces Act, generally requiring Colorado employers to provide employees with up to 48 hours of paid sick leave per year beginning in 2021. In addition, employers are subject to a temporary mandate that extends COVID-related paid sick leave protections to employees not previously covered by the federal FFCRA. (See our [August 6 FYI](#).)

Complying with Colorado's new COVID-19 paid sick leave mandate

Colorado's Healthy Families and Workplaces Act requires employers that are not covered by the federal FFCRA to provide COVID-related paid sick leave through December 31, 2020. Recent guidance from the Colorado Department of Labor and Employment clarifies employer compliance obligations under the COVID-19 provisions of the new law. (See our [August 11 FYI](#).)

San Francisco issues guidance on new reemployment rights

San Francisco’s “Back to Work” Emergency Ordinance, which took effect on July 3, is slated to expire on September 1, 2020 unless extended. Until then, employers operating in San Francisco that employ at least 100 employees will be required to first offer reemployment to workers laid off for COVID-related reasons before rehiring for the same or similar jobs. On August 7, the San Francisco Office of Economic and Workforce Development issued guidance on the ordinance along with FAQs and form notices employers may use to satisfy related reporting requirements. (See our [August 19 FYI](#).)

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