JS Clark Agency Webinar: COVID-19 Pandemic Federal & State Updates Employee Benefits
SAVE THE DATE!
JS CLARK AGENCY SPRING WEBINAR
April 9, 2020
CAPITOL HILL DEVELOPMENTS

- Coronavirus Aid, Relief, and Economic Security Act - CARES Act
  - $2.2 Trillion Stimulus Package
  - Passed in the Senate March 25, 2020
    - Vote of 96 - 0
  - Passed in the House March 27, 2020
  - Signed by the President March 27, 2020
• Recovery payments to adults
  • $1,200 for those with AGI up to $75,000 (2x for couples) and $500 per child
• $100 Billion in hospital funding assistance
• $367 Billion for small business loans
• $500 Billion for businesses and municipalities
• $150 Billion in state and local stimulus funds
• Unemployment subsidies
• Waiver of penalties on retirement withdrawals up to $100,000
• Delay of 2019 tax filings and payments until July 2020
CARES Act of 2020

• Small Business Paycheck Protection Loans
  • Available for businesses operating prior to February 15, 2020
  • Available for businesses with not more than 500 employees*
    • The hospitality industry (NAICS Code 72) are eligible with not more than 500 employees per physical location
    • For example: a restaurant franchisee with 3,000 employees but no more than 500 employees at any one location may qualify
  • Provides employers funds for
    • Payroll costs*
    • Healthcare costs
    • Rent – Utilities - Other debts incurred by the business
  • The maximum loan amount is the lesser of the average monthly payroll costs during the prior year x 2.5 or $10 million
  • Includes loan forgiveness provisions
• **Employee Retention Tax Credit**
  • Refundable payroll tax credit of 50% of qualified wages paid during the COVID-19 pandemic
    • Applies to wages paid between March 13, 2020 – December 31, 2020
    • Employers whose operations were fully or partially suspended due to a shut-down order or
    • A decline in gross receipts by more than 50% compared to the same quarter in the previous year
  • Applies to first $10,000 of qualified wages
    • Includes health benefits
CARES Act of 2020

• Payroll Tax Holiday
  • Deferral of employer social security taxes
    • 6.2% tax on employee wages
  • Applies to wages paid between March 13, 2020 – December 31, 2020
  • Deferrals will be recouped over two years
    • Half due by December 31, 2021
    • Reminder due by December 31, 2022
• Unemployment Provisions
  • Pandemic Unemployment Assistance program for full or partial unemployment AND/OR inability to work due to COVID-19
    • Applies for unemployment between January 27 and December 31
  • Includes individuals not entitled to any other unemployment compensation or waiting period credit
    • Self-employed individuals and independent contractors
  • The weekly benefit amount is generally the amount determined under state law plus an additional $600 until July 31st
    • 4 months
  • Maximum entitlement is expanded to 39 weeks
CARES Act of 2020

• HDHPs can cover telehealth and other remote care service expenses without deductible or cost sharing
  • Does not impact HSA contribution eligibility
  • March 27, 2020 - December 31, 2021

• Tax preferred plans can be used for over-the-counter drugs and medicines without a prescription
  • FSA - HRA - HSA

• Menstrual care products are eligible as a qualified medical expense
  • FSA – HRA - HSA
  • Retroactive to expenses incurred after December 31, 2019 qualify
CAPITOL HILL DEVELOPMENTS

Families First Coronavirus Response Act
- Introduced in the House March 11, 2020
- Passed in the House March 14, 2020
  Vote of 363 - 40
- Updated in the House March 16, 2020
- Passed in the Senate March 18, 2020
  Vote of 90 - 8
- Signed by the President March 18, 2020

Emergency Paid Sick Leave Act

Emergency Family and Medical Leave Expansion Act

Health Provisions for COVID-19 Testing
CAPITOL HILL DEVELOPMENTS

• Emergency Paid Sick Leave Act
  • Effective April 1, 2020
  • In effect until December 31, 2020
• Applies to employers with 1 to 500 employees and all government employers
Emergency Paid Sick Leave Act

• Requires up to 80 hours of paid sick leave for employees who are:
  • Unable to work remotely and
    • Under quarantine or isolation order
    • Advised by a health care provider to self-quarantine
    • Experiencing symptoms of COVID-19 and seeking a medical diagnosis
  OR
  • Unable to work remotely and
    • Caring for an individual who is under quarantine or isolation or has been advised by a health care provider to self-quarantine
    • Caring for a son or daughter if the child’s school or place of care is closed, or the child care provider is unavailable due COVID-19 precautions or
    • Experiencing any other substantially similar condition specified by the Secretary of Health and Human Services…
Emergency Paid Sick Leave Act

- Paid sick leave applies for the period of April 1, 2020 – December 31, 2020
- Includes all employees regardless of length of service
- Calculated based on the employee’s regular rate of pay or the applicable minimum wage rate
- Paid leave is capped at $511 per day and $5,110 total
  - Capped at $200 per day and $2,000 total for an employee to care for a family member or child or an employee experiencing any other substantially similar condition
  - Part-time employees paid leave is calculated based on the average hours worked over a two week period or if hours vary a six month period
Emergency Paid Sick Leave Act

• DOL Clarifications
  • Intermittent leave is allowed
    • Cannot be used to compensate for a reduction of hours
  • Limited to 10 days for all qualifying conditions
  • Employers cannot require employees use other paid leave prior to the emergency paid leave
  • Paid sick leave is not available for leave prior to April 1
  • Paid sick leave is not available to employees on layoff
    • Employees may be eligible they return to work and have an eligible event at a later date
  • Paid sick leave is not available to employers that close their worksite
    • Employees may be eligible if an employer reopens and employees resume
  • Employers of Health Care Providers or Emergency Responders may elect to exclude those employees from leave requirements
    • Employees are not eligible for unemployment while on paid sick leave
  • Don’t forget the Notice Requirement
CAPITOL HILL DEVELOPMENTS

- Emergency Family and Medical Leave Expansion Act
  - Effective April 1, 2020
  - In effect until December 31, 2020
- Applies to employers with 1 to 500 employees and all government employers
Emergency Family and Medical Leave Expansion Act

• Amends FMLA to require employees 12 weeks of job-protected leave for a qualifying need related to a public health emergency
  • A qualifying need means an employee is unable to work (or telework) due to care for a child under 18 if a school or place of care is been closed or a child care provider is unavailable due to a public health emergency
• The first 10 days may be unpaid leave, or employees may substitute any vacation, personal, sick leave
  • Employees may be eligible for the Emergency Paid Sick Leave Act
  • Employers cannot require employees use vacation, personal time or sick leave
Emergency Family and Medical Leave Expansion Act

• After the first 10 days employers must provide paid leave based $2/3\textsuperscript{rd}$ of the regular rate of pay and the number of hours normally scheduled to work
  • Paid leave is capped at $200 per day and $10,000 total - $12,000 total combined with paid sick leave
  • Overtime is included in the calculation for Emergency Family and Medical Leave
  • Part-time employees paid leave is calculated based on the average worked over a two week period or if hours vary a six month period
• Reinstatement of job and benefits following leave is required
• There is an exception for employers with less than 25 employees if
  • An employee takes a Public Health Emergency Leave; AND
  • The employees’ position does not exist due to economic conditions or other changes that (i) affect employment, and (ii) are caused by a public health emergency during the leave; AND
  • The employer makes reasonable efforts to reinstate the employee to the employee’s original position or another equivalent position with equivalent benefits, pay, and other terms and conditions of employment; AND
  • Reasonable efforts to reinstate fail, but the employer makes reasonable efforts to contact the employee if an equivalent position becomes available during the one-year period commencing from the earlier of (i) the date the qualifying need for the Public Health Emergency Leave ends, or (ii) 12 weeks after the employee began the Public Health Emergency Leave
Emergency Family and Medical Leave Expansion Act

• DOL Clarifications
  • Intermittent leave is allowed
  • Limited to 12 weeks for all qualifying conditions
  • Paid leave is not available for leave prior to April 1
  • Paid leave is not available to employees on layoff
    • Employees may be eligible they return to work and have an eligible event at a later date
  • Paid leave is not available to employers that close their worksite
    • Employees may be eligible if an employer reopens and employees resume
  • Employees are not eligible for unemployment while on paid sick leave
  • Employers of Health Care Providers or Emergency Responders may elect to exclude those employees from leave requirements

• Don’t forget the Notice Requirement
• CARES Act Clarification
  • Rule Regarding Rehired Employees
    • Eligible employee means an employee who has been employed for at least thirty calendar days by the employer
    • Employed for at least thirty days includes employees who
      • Were laid off after March 1, 2020
      • Worked for the employer for at least 30 of the last 60 days and
      • Were rehired by the employer
CAPITOL HILL DEVELOPMENTS

Employer Relief
• Emergency Paid Sick Leave Act
  • 100% tax credit of the qualified sick leave wages paid per quarter based
    $511 per day
    • For employees caring for a family member or for a child whose school or
      place of care has been closed, $200 per day
    • Capped at 10 days per employee

• Emergency Family and Medical Leave Expansion Act
  • 100% tax credit of the qualified family leave wages paid per quarter
  • Up to $200 per day (or partial days) per individual up to a maximum of
    $10,000 per individual
  • Part-time employees paid leave is calculated based on the
    average worked over a two week period or if hours vary a six
    month period
  • The cost of employer health insurance premium is included at
    100%
    • Waiting on guidance from the IRS and Treasury
Employer Relief

• IRS Notice 2020-57 – March 20
  • Requirements subject to 30-day non-enforcement period for good faith compliance efforts
  • The Departments announced a plan to implement the FFCRA-related tax credits for small and midsize businesses
  • Employers will not have to wait until the end of the quarter to receive potential tax credits for FFCRA paid leave
    • Employers may retain, instead of depositing or escrowing, 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

• IRS Notice 2020-21 – March 27
  • Effective Date for Employment Tax Credits Under the Families First Coronavirus Response Act clarifies for qualified wages for the period of April 1, 2020 – December 31, 2020
  • Pending IRS forms and instructions

• DOL Clarification
  • Employers that supplement paid leave are limited to the tax credit for approved amounts under the FFCRA
Employer Relief

• DOL Clarifications
  • Small businesses with fewer than 50 employees may qualify for an exemption from the requirement to provide paid sick leave or leave due to school closings or child care unavailability if the leave requirements would jeopardize the viability of the business as a going concern.
  • To elect this small business exemption, you should document why your business with fewer than 50 employees meets the criteria set forth by the Department, which will be addressed in more detail in forthcoming regulations.
  • You should not send any materials to the Department of Labor when seeking a small business exemption for paid sick leave and expanded family and medical leave.
CAPITOL HILL DEVELOPMENTS

• Health Provisions
  • Effective March 18, 2020
  • Coverage of Testing for COVID-19
  • Prohibits cost-sharing for COVID-19 testing
    • Includes cost of associated office visit, telehealth visit, urgent care visit, and emergency room visit
  • Prohibits prior authorization and medical management requirements
  • Applies to all group health plans
    • Including self-funded and grandfathered health plans
  • Applies to all government plans
STATE & LOCAL DEVELOPMENTS

• Stay Home Stay Safe Executive Order 2020-21
  • Issued March 23, 2020

• Oakland County Emergency Order 2020-05
  • Effective March 25, 2020 at 12:00 pm through April 13
Stay Home Stay Safe
Executive Order 2020-21

• Effective March 23, 2020 at 12:00 pm through April 13
  • Prohibits all businesses from requiring workers to leave their homes unless those workers are necessary to sustain or protect life or to conduct minimum basic operations
  • Businesses and operations are to designate the workers that meet those criteria, and must adopt social distancing practices and other mitigation measures to protect workers and patrons in the performance of that necessary in-person work
  • All public and private gatherings of any number of people occurring among persons outside a single household are temporarily prohibited
  • People may leave the house to perform for limited, necessary purposes, and may engage in outdoor activities like walking, hiking, running, cycling, or any other recreational activity, consistent with remaining at least six feet from people from outside a person’s household and with other restrictions imposed by prior executive orders
Stay Home Stay Safe
Executive Order 2020-21

• Extends unemployment benefits for employees that
  • Have left work or taken a leave of absence for self-isolation or self-quarantine due to a immunocompromised condition
  • Are displaying symptoms
  • Have been in contact within 14 days with someone with a confirmed diagnosis of COVID-19
  • Need to care for someone with a confirmed diagnosis of COVID-19
  • Need to care for family as a result of a government directive

• Key Term: Temporarily laid off from work or furlough
• Effective March 25, 2020 at 12:00 pm through April 13
• Develop and implement a daily screening program for all staff
• Screening criteria must include the following questions:
  • Symptom check (fever, cough, shortness of breath, sore throat, diarrhea)
  • When a touchless thermometer is available, a temperature check is strongly recommended in lieu of verbal confirmation
  • Any close contact in the last 14 days with someone with a diagnosis of COVID-19
  • Travel internationally or domestically in the last 14 days
• A yes to any of the screening questions above requires the employee to be excluded:
  • 3 days with no fever and 7 days since first symptom
  • 14 days if close contact of diagnosed case of COVID-19
• Develop and implement a plan to manage and control social and physical distancing at least 6 ft spacing for employees working alongside one another and customers waiting in lines within or outside the business
• Limit capacity inside facilities to provide for social distancing of customers and between customers and employees including but not limited to visual markings and signage; entrance limits and specialized hours
• Publish the order at entrance of the facility and to the members of the public at large by all reasonable means available
EMPLOYEE BENEFITS

• Insurance Carriers
• Continuation of Benefit Options
• FSA & DCAP
• Employer Contribution Options
• Federal & State Benefits
• Out of State Employees
Insurance Carriers Step Up

**Medical, Dental, Vision & Life**
- BCBSM/BCN, HAP, United Health Care & EyeMed
  - Will allow continued coverage during a period of layoff with premium payment
  - Will allow reinstatement following layoff
  - Will allow for open enrollment changes
- Priority Health, Total Health Care & Delta
  - Will allow continued coverage during a period of layoff with premium payment
  - Will allow reinstatement following layoff
- All carriers are covering testing at no cost for COVID-19 evaluation
  - Includes associated office visits, telehealth, urgent care and emergency visits
- Most carriers are providing telehealth without cost-sharing regardless of diagnosis

**Disability**
- Guardian (STD only), LFG, MetLife, Mutual of Omaha, Principal & UNUM
  - Will allow continued coverage during a period of layoff with premium payment
  - Employees will be considered actively-at-work for purposes and will be able to submit claims for qualifying disabilities
## Continuation of Benefit Options

<table>
<thead>
<tr>
<th>COVID-19 Scenario</th>
<th>Health Benefits</th>
<th>Life</th>
<th>Disability</th>
<th>Voluntary Pre-Tax Benefits</th>
<th>Voluntary Post-Tax Benefits</th>
<th>FSA</th>
<th>DCAP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee is working remotely</td>
<td>Qualifying Status Change</td>
<td>Qualifying Status Change</td>
<td>None</td>
<td>Qualifying Status Change</td>
<td>Enrollment Rules Apply</td>
<td>Qualifying Status Change</td>
<td>Qualifying Status Change</td>
</tr>
<tr>
<td>Temporary Layoff with Pay or Reduction in Hours &gt;30</td>
<td>Qualifying Status Change</td>
<td>Qualifying Status Change</td>
<td>None</td>
<td>Qualifying Status Change</td>
<td>Enrollment Rules Apply</td>
<td>Qualifying Status Change</td>
<td>Qualifying Status Change</td>
</tr>
<tr>
<td>Temporary Layoff without Pay or Reduction in hours PT</td>
<td>Qualifying Event</td>
<td>Continue without change</td>
<td>Continue without change</td>
<td>Qualifying Event</td>
<td>Qualifying Event</td>
<td>Qualifying Event</td>
<td>Qualifying Event</td>
</tr>
<tr>
<td>Reduction in pay</td>
<td>Qualifying Status Change</td>
<td>Qualifying Status Change</td>
<td>None</td>
<td>Qualifying Status Change</td>
<td>Enrollment Rules Apply</td>
<td>Qualifying Status Change</td>
<td>Qualifying Status Change</td>
</tr>
<tr>
<td>Temporary Layoff without Employer continuation of coverage or Termination</td>
<td>COBRA</td>
<td>Conversion Portability</td>
<td>Terminate</td>
<td>Terminate</td>
<td>Terminate</td>
<td>Terminate COBRA</td>
<td>Terminate</td>
</tr>
</tbody>
</table>
Employer Contribution Options

• Continue coverage without contributions
• Continue coverage with contributions
  • Pay as you go
  • Monthly contributions
  • Catch up contributions
• No discrimination
## Federal & State Benefits

### COVID-19 Scenario

<table>
<thead>
<tr>
<th>COVID-19 Scenario</th>
<th>Paid Sick Leave</th>
<th>FMLA</th>
<th>Extended FMLA</th>
<th>Unemployment Insurance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee is working remotely</td>
<td>Does not apply</td>
<td>No</td>
<td>Does not apply</td>
<td>No</td>
</tr>
<tr>
<td>Employee was put on temporary layoff</td>
<td>Does not apply</td>
<td>No</td>
<td>Does not apply</td>
<td>Yes</td>
</tr>
<tr>
<td>Employee was terminated due to reduction in workforce</td>
<td>Does not apply</td>
<td>No</td>
<td>Does not apply</td>
<td>Yes</td>
</tr>
<tr>
<td>Employee is diagnosed positive</td>
<td>Applies after April 1</td>
<td>Yes</td>
<td>No</td>
<td>After paid leave ends</td>
</tr>
<tr>
<td>Employee is exposed without diagnosis</td>
<td>Applies after April 1</td>
<td>No</td>
<td>No</td>
<td>After paid leave ends</td>
</tr>
<tr>
<td>Employee self-quarantines with physician order</td>
<td>Applies after April 1</td>
<td>No</td>
<td>No</td>
<td>After paid leave ends</td>
</tr>
<tr>
<td>Employee self-quarantines without physician order</td>
<td>Applies after April 1</td>
<td>No</td>
<td>No</td>
<td>After paid leave ends</td>
</tr>
<tr>
<td>COVID-19 Scenario</td>
<td>Federal Paid Sick Leave</td>
<td>FMLA</td>
<td>Extended FMLA</td>
<td>Unemployment Insurance</td>
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<tr>
<td>---------------------------------------------------------------------------------</td>
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<td>------------------------</td>
</tr>
<tr>
<td>Employee is unable to work due to a school closing</td>
<td>Applies after April 1</td>
<td>No</td>
<td>Applies after April 1</td>
<td>After paid leave ends</td>
</tr>
<tr>
<td>Employee caring for diagnosed family member</td>
<td>Applies after April 1</td>
<td>Yes</td>
<td>No</td>
<td>After paid leave ends</td>
</tr>
<tr>
<td>Employee caring for exposed family member</td>
<td>Applies after April 1</td>
<td>No</td>
<td>No</td>
<td>After paid leave ends</td>
</tr>
<tr>
<td>Employee has reduction of hours from full-time to part-time</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Employee has reduction of pay</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Company completely shuts down temporarily as a non-essential employer</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>
 STATES WITH PAID FAMILY & MEDICAL LEAVE REQUIREMENTS

• California
  • San Francisco
• Connecticut
  • Effective January 2022
• District of Columbia
  • Effective July 2020
• New Jersey
• New York
• Massachusetts
  • Effective January 2021
• Michigan
  • Effective March 2019
• Oregon
  • Effective January 2023
• Rhode Island
• Washington
  • Effective January 2020

 STATES WITH PAID MEDICAL LEAVE REQUIREMENTS

• Hawaii
• Puerto Rico

 STATES WITH PAID MEDICAL LEAVE REQUIREMENTS FOR SCHOOL CLOSINGS

• Arizona
• New Jersey
• Michigan
• Oregon
• Rhode Island
• Washington
• Vermont

Out of State Employees
Please visit our resource center online for employer and HR resources related to COVID-19.
• While JS Clark focuses on Employee Benefits, as an AssuredPartners company there are many additional levels of great resources

• The Town Hall meetings are a great source for Property and Casualty information as well as Employee Benefits

• Click here to register to sign up for the next Town Hall Broadcast April 1 at 1:30 pm (EST)

• The AssuredPartners COVID-19 Resource Center is available at AssuredPartners.com/Coronavirus-Resources
BENEFITS DURING THE PANDEMIC

• When in doubt...

Contact Us
• The opinions offered in this presentation are from licensed insurance professionals and should in no way be construed as legal advice.

• This presentation is based on our interpretation of the current laws, rules and regulations of the Departments and the health insurance market.

• These are subject to change.

• If you have any questions as to how the legal aspects of Health Care Reform will affect your specific company, please contact your legal counsel for advice.
A recording of today’s webinar will be available via our resource page on **Wednesday, April 1**. You will receive an email when it is posted.