COVID-19 FAQs
EMPLOYEE BENEFITS

JULY 2020

MEDICAL COVERAGE

Is COVID-19 testing covered by my policy?

Yes. All group health plans must cover certain COVID-19 diagnostic and serology (antibody) testing **without** cost sharing, prior authorization, or other medical management requirements, **as ordered by the individual's attending health care provider**, along with all related services for the visit to the extent needed to evaluate the individual's need for a test and to administer the test.

- All group health plans must comply, even grandfathered, self-funded, and governmental plans.
- See the Food & Drug Administration's webpage for more info on covered tests, including approved home kits and serology tests.
- This includes in-network and out-of-network telehealth, drive-through, urgent care, and emergency room visits that result in a COVID-19 test or order.
- This includes other related tests (such as chest x-ray and tests for flu, RSV, norovirus, etc.) if that visit results in a COVID-19 test or order.

If we cover tests and related services without cost sharing, how will that affect HSA eligibility?

According to IRS Notice 2020-15, high deductible health plans may cover COVID-19 testing and related services, as well as all subsequent COVID-19 treatment, with low or no cost sharing without compromising the ability to contribute to a health savings account (HSA), for a limited time.

What is the recommended coverage for COVID-19 testing and treatment for self-funded plans?

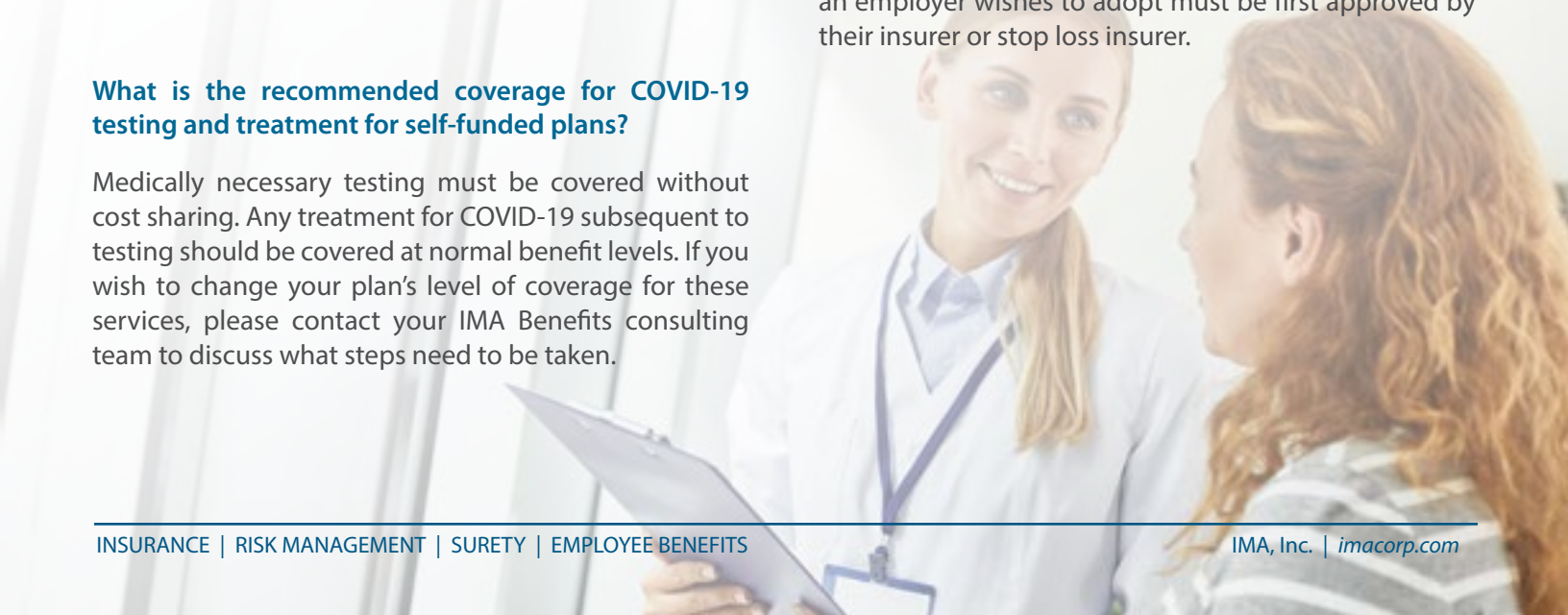
Medically necessary testing must be covered without cost sharing. Any treatment for COVID-19 subsequent to testing should be covered at normal benefit levels. If you wish to change your plan's level of coverage for these services, please contact your IMA Benefits consulting team to discuss what steps need to be taken.

Can I allow employees to change their benefits elections due to changes in circumstances related to COVID-19?

On May 12, 2020, the IRS announced that employers may permit employees to make some or all of the following special election changes:

- Prospectively elect medical coverage if they'd initially declined it
- Prospectively change their medical plan election to another plan and/or to include more dependents
- Prospectively drop medical coverage upon attesting in writing to having or immediately enrolling in other coverage (sample language was provided)
- Prospectively make any change in health FSA salary reduction election (newly enroll, drop, or increase/decrease the election amount)
- Prospectively make any change in daycare FSA salary reduction election (newly enroll, drop, or increase/decrease the election amount)

These election changes are not required, and employers are free to limit any election changes to a particular election change window. Any flexibilities adopted for 2020 must be reflected in a formal plan amendment by December 31, 2021, and are specially permitted to apply retroactively to January 1, 2020 (noting the election changes exercised cannot apply retroactively). It will be important to communicate such changes to employees right away—your IMA Benefits team can provide you with a sample communication and election change form we've created. Any medical plan election changes an employer wishes to adopt must be first approved by their insurer or stop loss insurer.



Should I allow employees to move from a higher-cost plan to a lower-cost plan option?

Per IRS Notice 2020-29, employers are permitted, but not required, to allow employees to prospectively change their medical plan election to enroll in a different plan offered by the employer. An employer wishing to allow such changes must check first with your insurer or stop loss insurer.

Should I allow employees to drop coverage when hours reduce but eligibility is not lost?

Per IRS Notice 2020-29, employers may choose to allow employees to revoke an existing election for health plan coverage upon written attestation that the employee has or will immediately enroll in other coverage. Employers that wish to allow this flexibility may notify employees and start allowing the changes right away, but must adopt a formal plan amendment by December 31, 2021. The IRS notice provides sample language for a written attestation that employers may accept from employees. Additionally, your IMA Benefits team can provide a sample election change form to help communicate these flexibilities.

However, it's incredibly important employees understand the importance of things like health, life, and disability insurance during times of public health crisis, know that COBRA will not be offered, and understand they may not be able to re-enroll when normal hours resume since the reduction in hours didn't lead to a loss of eligibility to begin with, so resumption of FT hours isn't creating new eligibility.

If I allowed employees to voluntarily drop coverage, should I allow them to re-enroll when they resume normal full-time hours?

If eligibility was not lost due to the reduction in hours, then resuming full-time hours will not make employees newly eligible. Additionally, IRS Notice 2020-29 only permits allowing flexibility for employees who initially declined health coverage.

How will my employees' coverage be affected while they are not working?

In light of the widespread effects of the COVID-19 pandemic, many carriers have allowed for certain extensions to coverage beyond what would typically be permitted under employers' plan documents. If you wish to continue coverage for employees during quarantines, remote work arrangements, furloughs, or other reductions in employee hours, we encourage you to contact your IMA Benefits consulting team for coverage information and advice.

Absent any exception or extension in your coverage, the following general rules would apply:

- Terminated employees must be offered COBRA continuation coverage.
- Employees covered by FMLA should have benefits protected for up to 12 weeks. Keep in mind the FFCRA provides expanded FMLA protection for certain employees to care for children under 18 whose school or child care provider is unavailable due to public health emergency.
- Employees in a full-time stability period under the look-back method may remain covered under the major medical plan regardless of hours until exhaustion of their full-time stability period.
- Otherwise, employers should follow their written leave of absence provisions described in their wrap plan document. Benefits typically end at the end of the month in which the employee is no longer scheduled to work full-time, but some employers have language allowing coverage for employer-approved leaves of absence for another month or two, after which COBRA ensues due to reduction of hours.

Can we continue to cover employees if their hours are reduced during the COVID-19 outbreak?

Employers should follow the written terms of their plans unless they obtain special permission from their insurer or stop loss insurer to extend coverage outside of normal eligibility terms. If moving employees to COBRA, the employer might offer to provide the usual employer contribution (or perhaps even offer to pay full COBRA costs) for the first two or three months of COBRA to help with this transition, with the hope employees might return to full-time work by that time, but always run such arrangements by counsel to ensure compliance with laws like OWBPA and WARN.

As discussed above, many carriers have agreed to reasonable adjustments to plan terms during these circumstances. Please contact your benefits team confirm details specific to your plan(s).

What happens to employees who are unable to pay their premiums while they are not working full-time hours?

As discussed above, many carriers have agreed to reasonable adjustments to plan terms during these circumstances. Please contact your benefits team to discuss further.

Also, the FFCRA provides certain employees partially paid FMLA to care for children when school or child care is unavailable, as well as providing certain employees two weeks of emergency paid leave due to COVID-19. Benefits must be protected during these leaves.

Assuming employees unable to work full-time hours remain eligible and enrolled, employees unable to pay their premiums should be given a 30-day grace period notice to make up the premium shortfall. Should the employee be unable to make up the missing premium by the end of the 30-day grace period, the employer needs to decide whether to forgive the shortfall (and the employer pays that premium instead) or to terminate the employee's coverage without COBRA. If the employer pays premium shortfalls for employees during this time, they should likely do so for any employee experiencing a premium shortfall during this time in order to avoid discrimination problems.

If I choose to cover COVID-19 treatment through my self-funded plan, will my stop loss policy cover those claims?

Generally speaking, we have found that most stop loss carriers are covering both testing and treatment for COVID-19. Please contact your IMA Benefits consulting team to confirm details specific to your plan.

DISABILITY AND OTHER COVERAGE

Do employees qualify for short term disability benefits if they become ill due to COVID-19?

Disability policies typically include a 7- or 14-day elimination period before disability benefits would be payable. It is expected most employees ill with COVID-19 will have recovered before the end of the elimination period, so benefits would not apply when the employee recovers quickly.

In the event an employee is ill through that entire elimination period, then the policy's definition of disability determines whether benefits are payable. Claims for COVID-19 illness will be evaluated the same as any other illness that makes employees unable to perform material duties of their job.

IMA has gathered coverage details from several disability insurers we routinely work with. Please contact your IMA Benefits consulting team to confirm details specific to your plan.

Are employees considered to be actively employed while quarantined?

Most disability policies recognize employer-approved short leaves of absence as still actively at work. Additionally, the FFCRA provides for protected leaves of absence during many quarantines, protecting their actively at work status. Check with your IMA Benefits consulting team for your policy's details.

Are employees with symptoms of COVID-19 covered by our critical illness, specified disease, or hospital indemnity policy?

Please contact your IMA Benefits consulting team to confirm details specific to your plan.

Are employees with symptoms of COVID-19 covered by our long-term care policy?

Long term care insurance (LTCi) would typically cover extended inability to perform two or more activities of daily living (ADLs) without assistance, such as bathing, eating, or transferring. Should the individual experience two losses of ADLs for the entire duration of their LTCi elimination period, then the LTCi policy would likely offer coverage at that point. Please contact your IMA Benefits consulting team to confirm details specific to your plan.

LEAVE ISSUES/ADA

Are employees entitled to FMLA leave during quarantines and other COVID-19-related leaves of absence?

A serious medical condition as defined by the FMLA generally requires hospitalization or ongoing care of a physician. Should either of these be present for a specific quarantine situation, FMLA might apply. Also, if a doctor recommends someone get tested, then taking time off for that medically necessary test and to be quarantined while waiting for the results will qualify for FMLA.

The FFCRA also provides expanded FMLA (EFML) protection for public sector employees and employees of private employers with fewer than 500 employees. Individuals employed at least 30 calendar days must be given up to 12 weeks of partially paid EFML to care for children under 18 whose school or child care provider is unavailable due to the public health emergency. The first two workweeks of this special leave are unpaid, but will generally be paid as Emergency Paid Sick Leave (EPSL). The remaining portion of the EFML are to be paid at two-thirds normal compensation, up to $200 per day and up to $10,000 in the aggregate. After the first two workweeks of EFML, employers may require employees to concurrently use paid leave under an existing paid leave policy to make up the missing 1/3 of pay or missing pay above $200 per day.

Employers must make reasonable efforts to restore the employee to the same or equivalent position following EFML (there is a hardship clause to exempt certain employers with fewer than 25 employees from this provision). For more details and analysis on the FFCRA's leave requirements, please visit IMA's COVID-19 Alert Center.

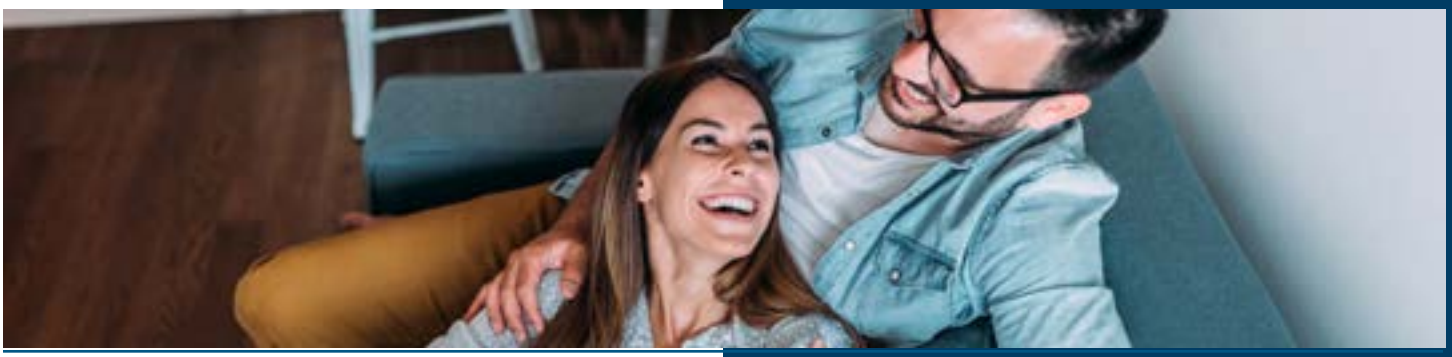
Am I required to pay employees during quarantines?

The FFCRA requires private employers with less than 500 employees and public employers of any size to provide Emergency Paid Sick Leave (EPSL) and Emergency Family and Medical Leave (EFML) to employees unable to work or telework for specific reasons related to the COVID-19 outbreak. If an employee is quarantined or isolated due to a federal, state, or local quarantine/isolation order, if the employee is advised to self-quarantine by a health care provider, or if the employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis, he or she is entitled to up to 80 hours of EPSL (for full-time employees) paid at the employee's regular rate of pay, capped at $511/day and $5,110 total. Employees are also entitled to EPSL while caring for an individual that is required to quarantine, which must be paid at 2/3 the employee's regular rate of pay, capped at $200/day and $2,000 total. For more details and analysis on the FFCRA's leave requirements, please visit IMA's COVID-19 Alert Center.

Some state or local paid leave laws might require pay during a quarantine. An employer's own leave policies may also provide for compensation during these instances. If employees are not otherwise entitled to pay, they should typically be allowed to use any accrued sick time or PTO while away from work.

In many instances, employees who are not sick will be capable of working from home during quarantines, and employers should review their remote work policies and procedures to minimize any business interruption during these periods. Employees working from home should be paid at their regular rates of pay.

There may be other tax relief available to help with such pay, such as under the Paycheck Protection Program's loan forgiveness, the Employee Retention Credit, or the section 45S paid FMLA tax credit.



Are employees that test positive for COVID-19 covered by the ADA?

Generally speaking, a COVID-19 diagnosis will not constitute a disability under the Americans with Disabilities Act (ADA) as it is typically a temporary condition. In the unlikely case that an employee's illness rises to the level of a covered disability, the ADA would require employers to evaluate whether reasonable accommodations could be made to enable someone to work without undue burden to the employer and without jeopardizing the health/safety of other employees.

Can we charge employees' vacation and sick leave balances while not working?

Employers cannot force employees to use existing paid leave entitlements during EPSL. However, if the employer and employee agree, employees may use accrued leave to supplement the amount of pay received during EPSL. After the first two workweeks of EFML, employers may allow or require employees to take existing paid leave that would otherwise be available to employees in those circumstances. For more details and analysis on the FFCRA's leave requirements, please visit IMA's COVID-19 Alert Center.

For leaves not covered by the FFCRA, employers should follow their written leave policies as well as any applicable state or local leave laws.

What happens to employees' benefits during FFCRA leaves?

Employers must continue employees' group health coverage during EPSL and EFML on the same conditions as it would have been provided if the employee was not on leave. See below for more details on continuing benefits coverage during leaves, furloughs, reductions in hours, and layoffs.

PRIVACY/HIPAA ISSUES

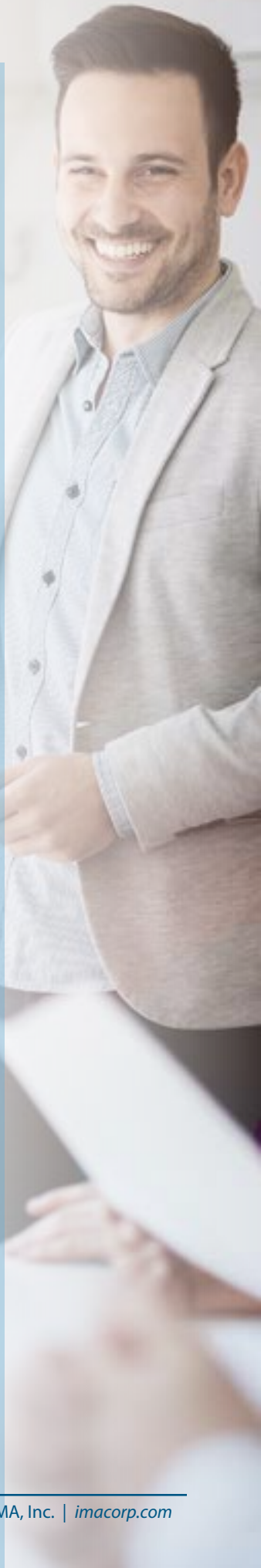
If an employee tests positive for COVID-19, can I inform their co-workers that they may have been exposed?

Employers have a duty to inform supervisors and co-workers of confirmed COVID-19 diagnoses, but should do so without divulging the identity of the individual that received the positive diagnosis. Typically employers are not going to learn of such a diagnosis from the health plan, so HIPAA privacy would rarely be implicated, but general privacy considerations under the ADA and other laws should always be top of mind. Your IMA Benefits consulting team will be happy to assist you if you have any questions or concerns about sharing this information.

Can I ask employees questions about their health to determine whether they need to be quarantined?

According to the EEOC, employers are permitted to ask employees questions about COVID-19 symptoms they are experiencing that might necessitate the need to be quarantined. Employers may also take employees' temperatures and/or administer COVID-19 diagnostic tests (but not serology/antibody tests) to determine whether they might pose a threat to the workplace. Employers should be careful to tailor these inquiries to specific symptoms related to COVID-19 and should avoid asking about other medical conditions except when engaging in the interactive process to determine whether reasonable accommodations are necessary.

Employers are authorized to insist employees stay home if conditions warrant, but should not discriminate and should prevent stigma/discrimination in the workplace.



What obligations do I have to protect employees from exposure to COVID-19?

Employers have a general duty under the Occupational Safety and Health Act (OSHA) to protect employees from known dangers at the workplace. As a result, it is imperative extra precautions are taken to protect the workplace from known or suspected exposures to the virus and to take extra cleaning measures. Both the CDC and OSHA have released guidance for businesses workplace exposure to COVID-19. Additionally, IMA has developed a variety of materials to assist employers in responding to the pandemic—please visit our COVID-19 Alert Center for more details.

What should I do if an employee gets sick?

Employers should not allow an employee with a confirmed diagnosis or known exposure to someone with a confirmed diagnosis to access the workplace during a quarantine period. Public health officials have provided guidelines for how long quarantines should last based on when symptoms subside after a minimum passage of time (or perhaps sooner with two negative tests at least 24 hours apart). Employers should also follow the CDC's recommendations for cleaning and disinfection and inform other employees of their potential exposure (without divulging the sick employee's identity). Potentially exposed employees may need to self-isolate and monitor their symptoms.

Can I send home an employee that appears to be sick?

Yes. If an employee is exhibiting symptoms of COVID-19, the employer may send that employee home and require the employee to self-quarantine to prevent exposure in the workplace

Can I force employees to get tested for COVID-19?

Yes, but be careful. The EEOC allows diagnostic testing to be required but not serologic/antibody testing. However, this may be excessive, as testing may not be readily available. Imposing a quarantine would be a more appropriate action in most scenarios. Only nursing homes and other long-term care facilities are recommended to test employees weekly.

Can I require employees to stay home if they have been exposed to others that have tested positive for COVID-19?

Yes. Employers will want to ensure all workers are protected from known potential threats to health and safety. Employees not wanting to be out for a full quarantine period would need two negative tests at least 24 hours apart. Keep in mind, however, the virus may have an incubation period between two and 14 days, so be cautious to not allow employees to cut their quarantine short with testing done too early.

What if an employee is simply quarantined for potential exposure but shows no symptoms?

If the employer can accommodate the employee working from home, then hopefully the quarantine will have little effect on the employee's status or benefits. If the employee is unable to telework, the employee may qualify for EPSL. Otherwise, the employer should follow its leave of absence policies, and if not already providing paid leave, may consider a short-term emergency paid leave provision for impacted employees (there may even be some tax credits available to help pay toward such leaves).

TRAVEL POLICIES

Can we restrict employees from traveling to high-risk areas?

Generally employers can restrict business travel but not personal travel. Employers can, however, require all personal travel be reported to the employer so quarantines can be enforced.

Can I require employees to stay home if they have recently traveled to high-risk areas?

Yes, employers are permitted to impose quarantine requirements for employees known to have traveled to high-risk areas. In some cases, such quarantines may be required by state or local public health orders.

If so, are we required to pay employees during that time?

Some states and municipalities require paid leave. If an employee is subject to a government quarantine or isolation order and is unable to telework, the leave may be covered by EPSL. Please see above for further discussion regarding pay during quarantines.

REDUCED HOURS, FURLOUGHS, TEMPORARY LAYOFFS, AND PERMANENT REDUCTIONS IN FORCE

If I need to reduce hours, how will that affect benefits eligibility?

A reduction of hours below 30 hours per week (or below your plan's full-time eligibility definition, if different) would typically lead to a loss of coverage subject to offering COBRA. However, many carriers have announced relaxed eligibility rules allowing plans to maintain eligibility for participants during these circumstances. We encourage employers to check with their IMA Benefits consulting team for information about their coverage and to discuss any desired adjustments. For an employer utilizing the look-back method, employees in full-time stability periods should be able to maintain their medical coverage at full-time rates during any full-time stability periods. While the IRS only developed the look-back method to apply to medical plans, some employers chose to voluntarily adopt stability periods to also apply to dental, vision, flexible spending account, or other benefits as well. Employers should double check their own look-back eligibility terms to identify which benefits are impacted.

Reduced hours could also impact an employee's current measurement period. Hours which are or should be paid are counted for measurement purposes, but the only categories of unpaid time which must be credited toward employees are FMLA, jury duty, or USERRA. Employers will need to determine whether to be generous and count unpaid time due to COVID-19 business interruption toward measurement results.

Reduced hours may cause employees to be unable to pay their share of premiums. Typically employers would extend a 30-day grace period to allow employees to make up the missed premium, then if the employee is unable to pay within those 30 days, terminate coverage without COBRA. In these scenarios, the employee would be unable to rejoin the plan until they experience a qualifying event (such as marriage or birth) or at the next annual open enrollment, which means returning to FT hours won't be enough to allow them back on the plan. During these extenuating circumstances, however, employers might decide whether to be lenient with employees that cannot pay within the grace period, choosing to pay the employee's share as those needs arise.

If I need to furlough some employees, how will that affect benefits eligibility?

Furloughed employees remain "employed," so the same discussions above apply (their hours just happen to reduce to zero). The difference here is employers may decide to cover all of the cost of coverage for employees rather than expecting them to continue to pay monthly premiums.

If I need to temporarily lay off some employees, how will that affect benefits eligibility?

A temporary layoff ensures employees can apply for unemployment, so employment is officially terminated with the prospects of potential recall in the future. When employment is terminated, COBRA is offered, but employers can decide whether to help contribute toward the cost of COBRA for a certain number of months during the layoff. Note that insurers may reserve the right to rerate your plans should eligibility change by more than 10%. Additionally, the federal government has announced relief allowing plans and employees additional time to comply with various benefit-related deadlines, which significantly extend an employees' window to elect and pay for COBRA coverage.

If I need to exercise a permanent reduction in force, how will that affect benefits eligibility?

These would be permanent terminations of employment subject to COBRA. As part of severance agreements, some employers may choose to help contribute toward the cost of COBRA for a certain number of months. Note that insurers may reserve the right to re-rate your plans should eligibility change by more than 10%. Additionally, the federal government has announced relief allowing plans and employees additional time to comply with various benefit-related deadlines, which significantly extend an employees' window to elect and pay for COBRA coverage.

IMA

As your broker, IMA does not adjudicate claims or interpret the policy terms and conditions. That responsibility lies with the insurance carrier. However, we can give you our interpretation of the potential terms and meaning that will be discussed during the claim process. If you feel you have a claim you wish to pursue, we will be more than happy to submit on your behalf.

The information provided on COVID-19 and as relates to insurance coverage is an ever-changing topic. Any decisions by the courts or legislation enacted by state or federal authorities could alter the opinions provided above.

We also encourage clients to review contracts and other agreements for additional provisions which could provide recovery or other relief of capital commitments through force majeure or other clauses.